

STACK 1

# Public Utilities

*FORTNIGHTLY*



*April 2, 1931*

**LET BIG BUSINESS  
REGULATE ITSELF  
BY LINCOLN STEFFENS**

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**What the New Governors Think  
of State Regulation  
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**How Vulnerable Are Utility Stocks?  
BY FREEMAN TILDEN**

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**State Commission Control of  
Oil and Gas Wastage  
BY JOHN M. OSKISON**

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AN INVESTMENT—NOT AN OUTLAY

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FRANCIS X. WELCH  
Contributing Editor

M. M. STOUT  
Assistant Editor

# Public Utilities Fortnightly



VOLUME VII

April 2, 1931

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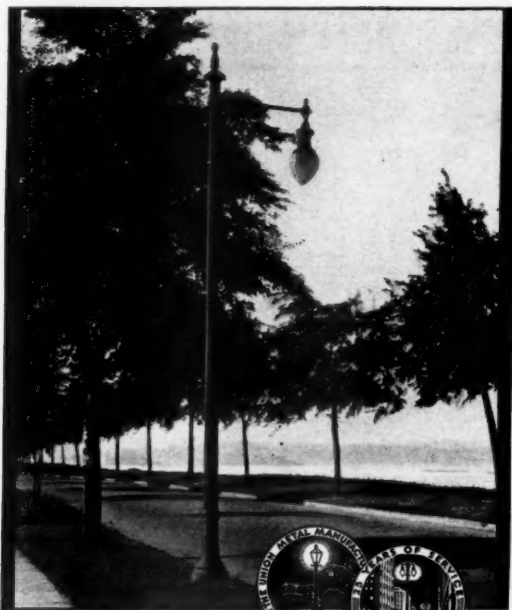
## PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including the decisions of the state commissions and courts, now issued in conjunction with Public Utilities Reports, Annotated; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication.

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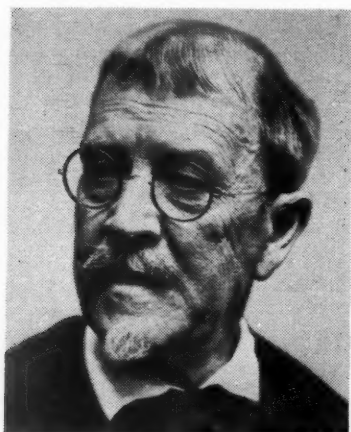
## Pages with the Editors

THE leading article in this number of PUBLIC UTILITIES FORTNIGHTLY is at once the shortest and the most pungent that has yet occupied the place of honor in this magazine.

Its surprise elements lie not only in the conclusions reached by its author—that the business interests of the country should take command of our government and thereby institute an era of self-regulation for industry and dispense with our politicians—but in the author himself, LINCOLN STEFFENS, who for over a generation has been regarded as this country's foremost "muck-raker" and one of the most active workers in the cause of the radicals and of the liberals.

Now, at the age of retirement following a particularly active life as a world-traveler and observer of economic changes, he has reached a conclusion about the future of the corporate interests in this country—a conclusion so frank and so startling that it will undoubtedly attract widespread attention.

THIS article (which begins on page 387) merely summarizes MR. STEFFENS' conclusions; it epitomizes his two-volume work "The Autobiography of Lincoln Steffens,"



LINCOLN STEFFENS

"I, for one, would be willing to remove all our prohibitions from all businesses . . . and then do no more politics but only business."

(SEE PAGE 387)

which will be published this spring by Harcourt, Brace & Co., and which will trace at length the various steps which have led the author from the camp of the radicals into the camp of the conservatives—although the journey was made by a circuitous route.

LINCOLN STEFFENS was born in California in 1866; graduated from the University of California in 1889; studied in various universities of Europe; began his newspaper work with the *New York Evening Post* in 1892; was managing editor of *McClure's* magazine from 1898 to 1902, and associate editor of the *American* and *Everybody's* magazines from 1902 to 1906, and is the author of several books.

FREEMAN TILDEN, (see "How Vulnerable Are Utility Stories?" page 401) is a magazine author and novelist who, with typical Yankee shrewdness, has been exceptionally successful in his investments, and who has made a particular study of utility securities.

BORN in Massachusetts in 1883 and entering newspaper work at an early age, MR. TILDEN has been a keen student of economics and finance, and has written many magazine articles on this subject.

MERLE THORPE (turn to page 409) is the editor and general manager of *The Nation's Business*, the monthly organ of the U. S. Chamber of Commerce.

MR. THORPE was born in Illinois in 1879; graduated from Stanford University in 1905, when he entered newspaper work; was professor of journalism in the University of Washington from 1907 to 1911 and at the University of Kansas from 1911 to 1916, and since then he has been the guiding genius of the periodical that occupies a unique and influential position in the field of business.

JOHN M. OSKISON (whose article "State Commission Control of Oil and Gas Waste," on pages 414 to 419, treats of a phase of regulation concerning which little is known but which is becoming of increasing interest) is a newspaper and magazine writer who has contributed previous articles to PUBLIC UTILITIES FORTNIGHTLY.

OUT of the daily mail the editors select the following letter that speaks for itself:

(Continued on page VIII)

# A New Comer!

## The C-E STOKER UNIT

---

The C-E Stoker Unit, which is a self-contained underfeed stoker with electric drive and integral fan construction, has recently been placed on the market by the Combustion Engineering Corporation.

This stoker has been developed to provide a simple automatic machine for the firing of small boilers up to 150 h. p. It has a number of features not available in other machines of its size, such as, agitated grate bars, side dumping grates and agitated feed hopper which eliminates arching of the coal and interrupted feed.

The design is self-contained, completely enclosed and provides a simple rugged and dependable unit for the underfeeding of coal under small boilers. Three sizes are available with coal burning capacities of 300 lb., 600 lb. and 1,000 lb. of coal per hour respectively.

Due to its unit construction, a C-E Stoker Unit may be installed and placed in operation in 6 to 12 hours.

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MERLE THORPE

*"Whenever a professional friend of the people is hard put for an issue, he can always fall back upon that durable bogey—'The Power Trust.'"*

(SEE PAGE 409)

"PUBLIC UTILITIES FORTNIGHTLY is the only magazine I know of in the nation, in its field, which is actually maintaining an even-Stephen forum of high character on utility issues.

"IN other words, the publication is on the square and is living up to the announced purpose of presenting both sides of utility problems.

"SOME of its articles are exceedingly valuable to any one in need of utility data or, on the other hand, who is keeping tab on the drift of opinion."

—Judson King,

*Director, National Popular Government League.*

"THE public utilities must fight. They cannot survive unless they fight and master the enemy that is menacing their existence. It is a case of fight or surrender."

SUCH is the vigorous message of JOHN SPARGO to the utility leaders—as expressed in the coming issue of PUBLIC UTILITIES FORTNIGHTLY.

IN this message the former Socialist sounds a call to arms against the radical elements which are "seeking to destroy private enterprise" in this country and set up instead a bureaucracy.

THE author goes further, however, than merely to sound the tocsin; he proposes a definite, cooperative organization for the purpose of creating "an effective force to wage war upon the propaganda that is directed to the destruction of private ownership and individual initiative."

ON the same principle that well-conducted business corporations lay aside funds for maintaining insurance against fire and other hazards, they should lay aside money "for the defense of the existence of our economic system, including assaults upon the conceptions of private property upon which the industrial system is based," maintains Mr. SPARGO.

HOWEVER strongly one may either endorse or oppose Mr. SPARGO's proposal to set up a League for Opposing Public Ownership, no one can question the timeliness of the author's views.

ANOTHER article of a controversial nature that will appear in the next issue of this magazine comes from the pen of Mr. R. HUSSELMAN, who is identified rather with the liberal than with the conservative group of economists, and whose opinions on "Some Fallacies of Customer Ownership" concludes with a constructive suggestion that will furnish substantial food for thought.

IN the "Public Utilities Reports" sections in the back of this number will be found court and commission opinions on the following subjects of special interest:

THE question of confiscating a customer's rights or the rights of a prospective customer has frequently been argued but not decisively settled by court decisions; this creates special interest in the recent decision by the circuit court of appeals in the Niagara Falls case holding that a prospective customer has no property rights in utility service which may be confiscated. (See page 127.)

A GREAT furore has been stirred up in Pennsylvania concerning public utility regulation; not least among the causes is the Scranton-Spring Brook Water case, in which substantial increases in rates were authorized in the coal mining regions, where pure water is scarce. (See page 149.)

THE order of the Maine Commission, refusing authority to capitalize bond discount, has been sustained by the Maine Supreme Judicial Court. (See page 143.)

THE next number will be out April 16th.

—THE EDITORS.



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At maximum rating they will each be capable of burning 28.3 tons of coal an hour.

It is interesting to note that stokers of the same type are already in operation at the Delray No. 3 Station of the Detroit Edison Company. The pusher rods have been brought out to the front of the stoker where, from the operating floor, the stroke of each one can be individually adjusted. Longitudinal and transverse expansion, important in the design of the long stoker, have been carefully allowed for.



Both stoker and crusher rolls are driven by a Hele-Shaw electro-hydraulic transmission which was also furnished by the *American Engineering Company*.

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A P R I L

Reminders of  
Coming Events**ALMANACK**Notable Events  
and Anniversaries

2	Th	The birth of the steam railroad was celebrated with the formal opening of the short but famous Liverpool & Manchester line in England; 1830. 
3	F	Four continents were connected by telephone when the line between the U. S. and South America was opened; 1930. Texas Railroad Commission was created; 1891.
4	Sa	Commercial transmission of pictures by wire began; 1925. The first screw propeller ship <i>Sirius</i> crossed the Atlantic; 1838.
5	S	Maryland's Public Service Commission came into existence when the governor approved the Public Service Commission Law; 1910.
6	M	CYRUS W. FIELD obtained exclusive rights for 50 years to land marine telegraph cables in New Foundland; 1854.
7	Tu	MICHAEL FARADAY announced his epoch-making invention of the electric dynamo—the father of the generators on which the electric industry so largely depends; 1831.
8	W	Transatlantic travel by steamer was inaugurated when the <i>Great Western</i> left Bristol, England, for New York on its first regular trip; 1838.
9	Th	¶ Make reservations for the 59th annual convention of the National Electric Light Association at Atlantic City, N. J., from June 8 to 12, 1931. 
10	F	The way was blazed for the cross-continent railways with the departure of the first wagon trains from St. Louis to Oregon; 1830.
11	Sa	The first substantially built railroad in the United States was built by GRIDLEY BRYANT between the quarries at Quincy, Mass., to the Neponset River; 1826.
12	S	The telegraph line between Philadelphia and Fort Lee, N. J. (across the Hudson, opposite New York), was completed; 1846.
13	M	The charter under which the Pennsylvania Railroad now operates was granted for the extension between Philadelphia to Pittsburgh; 1846.
14	Tu	The "Pony Express," the first common carrier to San Francisco, completed its first spectacular trip, after a 9-day journey from St. Joseph, Mo.; 1860.
15	W	The first train to run over the tracks of the Atchison, Topeka & Santa Fe Railway left Topeka for Wakarusa; 1869. The General Electric Co. was incorporated; 1892.

*"For strong souls  
"Live like fire-hearted suns; to spend their strength  
"In furthest striving action."*

—GEORGE ELIOT



*From a camera study by Wm. M. Ritase*

## Forging the Tools of Service

A SCENE IN A PLANT THAT MANUFACTURES UTILITY EQUIPMENT

*"A vast engine of wonderful delicacy and intricacy; a machine that is like the tools of the Titans put in your hands."*

—FERGUSON

# Public Utilities

FORTNIGHTLY

VOL. VII; No. 7



APRIL 2, 1931

## Let Big Business Regulate Itself

*The Conclusions of a Lifelong Reformer*

By LINCOLN STEFFENS

### FOREWORD

WHEN the spectacular series of magazine articles "The Shame of the Cities" burst upon the public in 1904, the author, Lincoln Steffens, not only established himself as a fearless reformer and brilliant writer, but also instituted in American journalism an era of "muckraking" that arrested world-wide attention. Acclaimed as an unselfish champion of the public and as a foe of corruption in politics and business by the liberals; branded as a Red, as a visionary, and as an agitator by the conservatives, Lincoln Steffens has led an eventful life as a journalist, radical, world-traveler, and observer of political and economic change. Now, at the age of sixty-five, he has arrived at some conclusions concerning the dominance of American business over American politics—conclusions that are as novel as they are startling, particularly at the present time when the problems of government regulation of public utilities have been projected so definitely into the arena of political debate. These conclusions (which are now being incorporated in a book), are here summarized in pellet form, exclusively for PUBLIC UTILITIES FORTNIGHTLY, by Mr. Steffens himself.

—THE EDITORS.

It is not quite fair to the subject, without their genesis. But in this to me, or to the readers of this case the genesis is not an argument; magazine, to give conclusions it is a story, a long life-story, which

## PUBLIC UTILITIES FORTNIGHTLY

will soon be available in book form, and my conclusions are not likely to be accepted offhand. Anyway, here they are:

Corruption has succeeded in the United States.

Business has won its way to power.

Politics is beaten; reform is licked.

The state cannot regulate business in general or the public utilities in particular.

**W**E are passing out of the period of opinion, when decisions and actions were based upon considerations of right and wrong. The age of reason is ended. Our culture today is experimental.

Well, many experiments have been made in the regulation of big, privileged businesses by the political government. The consequence has been always the same—political corruption, which results in the regulation of the regulators. Business has "had to" run politics and govern the state.

It was business men who said that they "had to" use bribery and corruption.

**I**NCREDULOUS for years, I was finally convinced that bribery and corruption cannot be dealt with as forms of felony, but must be regarded as items of a process, of a natural, inevitable force which was necessary to make a government formed by an agricultural people represent an industrial era. In a sense, then, bribery was an act of God.

The process of "corrupting" the American democracy into an industrial dictatorship is not yet completed, but it is near enough to the end to enable a willing observer to foresee that business or industry will either

govern the government or govern itself, or both.

**T**HIS may not be bad news; it may, indeed, prove good, if we acknowledge the change and learn to act upon it. Organized Labor prefers to deal with the management of business rather than the government of the state. Advanced thinkers ponder economics, not politics.

Our inherited division of government into two parts—the political state and the management of business—is being challenged in all countries. The duality is becoming inconvenient, if not impossible.

Italy is merging the two into one by attempting to make the state supreme in politics, business, and labor.

Russia is driving toward a unification of all industry and agriculture in one great, comprehensive organization which shall eventually replace the abolished state.

In America we still have a political government which directs what men shall drink and many businesses which direct what and whether we shall eat and work.

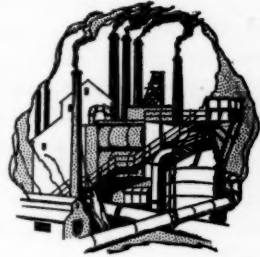
When President Hoover summoned to the White House in broad daylight last year the captains of industry to consider with him a common policy or plan to meet the economic depression, we were seeing a public recognition of the fact that our political government and the policy of business must be one as they were during the emergency of war.

**I**N any case, it looks as if business is going to have, directly or indirectly, what business men long have wanted: Self-government, the government of business, by busi-

---

The Ultimate Result of the Struggle of the State to Control Business, and of Business to Control the State:

**"B**USINESS is going to have, directly or indirectly, what business men long have wanted: Self-government, the government of business, by business, for business. . . . Business serves a social function far more important than politics. . . . I, for one, would be willing to remove all our prohibitions from all businesses, let them merge the trusts and the utilities and railroads, combine the mergers till there is one organization of all-inclusive business, and then do no more politics but only business, with business, and on a business basis."



---

ness, for business.

Are the business men ready for it?

**B**USINESS serves a social function far more important than politics. The governments of business now are freer, more anarchistic, more corrupt than political governments. Business ethics are lower than political ethics. It is "wrong" for a governor, it is all right for the head of a business, "to work for his own pocket all the time." And the prizes, the profits, the grafts of business are much more tempting, as well as less resisted. Can business men govern themselves any better than the people can?

What will business men do with their growing power, already almost sovereign? What will unregulated public utilities men do with their absolute control over the rates of our light, heat, power, and transportation, and over wages?

**N**ow, these rapid-fire conclusions and wonderings of mine may

sound like the random shots of a defeatist, and I am defeated—as a reformer. But I am not "tired" or sore or cynical. My life has been a life of unlearning and now, since the World War, the peace, and the revolutions, I am beginning to learn. There is something wrong to be righted, but there is an alternative to the reform that has failed.

**I**, for one, would be willing to remove all our prohibitions from all businesses, let them merge the trusts and the utilities and the railroads, combine the mergers till there is one organization of all-inclusive business, and then do no more politics but only business, with business, and on a business basis.

But, then, my experience is that business men do not know what business is; they say, but they really do not realize that business is business just as politicians do not realize that politics is business.



## What the New Governors Think of State Regulation

A terse summary of what the commissions and the utility companies may expect during the present administrations—as reflected in the recent utterances of the new chief executives.

By HENRY C. SPURR

**I**N view of the fact that public utility regulation is again becoming a plaything of politics, the recent recommendations of outgoing and incoming governors to the legislatures of the various states are both interesting and instructive.

In the forefront of the opponents of regulation, as at present administered, of course, stands Governor Gifford Pinchot of Pennsylvania. With the ardor of a crusader, he believes there is something seriously the trouble with the state public service commissions, especially with the Pennsylvania commission.

He thinks that distrust is well-nigh unanimous. He goes beyond any other governor in making a personal attack against the commission. His quarrel is apparently not so much with regulation as with the commissioners. He declared in his message to the legislature:

"Whenever, as in Pennsylvania, the public service commission is the cat's paw of the corporations instead of the protector of the people, widespread injustice is inevitable."

The governor says this of a commission which has caused rate reductions amounting in the aggregate to a saving to consumers of millions of dollars. He says it of a commission which has been reversed in rate proceedings involving valuation only in five cases in each of which the court determined that the value fixed by the commission was so low as to be confiscatory. He says it of a commission which has been reversed only four times in appeals to the courts in cases involving railroad rates, where reversal in each case was based on the ground that the commission order was unjust to the railroad company.

A cat's paw is supposed to be used for pulling luscious chestnuts out of the fire; not for pushing them in.

## PUBLIC UTILITIES FORTNIGHTLY

Still, Governor Pinchot believes the commission is a cat's paw of the corporations. He recommended an unbiased investigation of the commission, following the lead of a number of governors of other states in recent years. Investigations, although expensive, are undoubtedly useful in developing facts; but no support for such a charge as Governor Pinchot makes has ever been shown in any previous investigation of any public service commission in the country, and there is sufficient evidence in the nature of the decisions of the Pennsylvania commission itself abundantly to disprove the charge so far as that commission is concerned.

**G**OVERNOR Franklin D. Roosevelt of New York also thinks that regulation has failed. His views are well-known. Nothing new developed in his recommendations to the legislature. His idea is that domestic electric rates at least should be much lower than they are. Addressing the legislature he said:

"It would be a fine thing if you and I serving a common master—the people of the state of New York—would unite in this common purpose of bringing into the homes and stores and factories of our state these modern utilities at a cost reasonably consistent with a fair return to the legitimate investment in these corporations."

Again the governor, asserting that in many cases profits have been exorbitant, says that the plain truth is that effective regulation as contemplated originally has not been realized.

**G**OVERNOR Harry H. Woodring of Kansas, in his message, said that the effectiveness of the control and regulation of public utilities by a public service commission has been a

controversial question in Kansas since the enactment of the first public utilities commission act. That the support of public utility regulation has not been whole-hearted in Kansas may be gathered from the statement of the governor that the commission has never had available for its use sufficient funds to enable it properly to perform its functions.

**G**OVERNOR Julius L. Meier of Oregon is among those who think that regulation of public utilities has not been effective. In his message he said that because regulation as it now exists in Oregon has proven an utter failure he recommended the abolition of the present public service commission as now constituted and the creation of a department of public utilities to consist of a single commissioner appointed and removable at the discretion of the governor, with a salary adequate to secure the services of a man of experience and first class ability.

**G**OVERNOR C. Ben Ross of Idaho also said that there is a growing dissatisfaction with the result obtained in the operation of the public utilities under the present public utilities commission of Idaho. He asserted that the commissioners are underpaid and said that the salary of these offices should be such as to attract outstanding individuals to the office. But as this would raise taxes, he also recommended reducing the personnel of the utilities commission to one man with a material increase in his salary over that now paid to the individual members of the commission.

## PUBLIC UTILITIES FORTNIGHTLY

**I**T will be remembered that Wisconsin was one of the states in which the modern policy of regulation was established. This was done largely through the influence of former Governor Robert L. LaFollette, one of the fathers of regulation. At that time there was a quite prevalent belief that utility rates were based on watered stock, and so the demand of the progressives of that day was for valuation of utility properties in order that the return might be limited to the actual value of the property employed in the public service rather than on the amount of stock issued. Since that time valuation has been attacked very vigorously by the followers of the militant governor.

The message of his son, the present Governor Philip F. LaFollette, is, therefore, of considerable interest. In his communication he said that every investigation in recent years established the need for a thorough reconstruction of the technique and procedure of regulation. He declared that it was his purpose to discuss the problem of regulation in detail in a later message.

That seems to be the extent of the direct criticism of state commission regulation of public utilities.

**T**HE recommendation of municipal ownership and operation of public utilities may, however, be taken as evidence of the belief that private ownership under public regulation is not altogether satisfactory. The municipal ownership question is discussed by several of the governors. For example, Governor C. Ben Ross of Idaho said:

"The advisability as well as the de-

sirability of cities and villages owning and operating their own utilities such as water system and power plants cannot be questioned, and municipal corporations should be given aid and encouragement in the operation of plants of this nature when it is the desire of their inhabitants to so operate them."

His recommendation was that the state Constitution be changed so that it may be possible for municipal corporations to acquire and operate municipally owned plants without the necessity of submitting the matter to a vote of the qualified electors, or of issuing bonds for that purpose, by providing for the payment of the obligations incurred solely from revenues derived from the system to be installed.

**G**OVERNOR Dan W. Turner of Iowa, while asking for the extension of regulation in that state, believes that municipal ownership of utilities should not be discouraged, and he also recommended that a statute be enacted granting authority to cities and towns to contract for municipal utility plants to be paid for from their earnings.

**G**OVERNOR Charles W. Bryan of Nebraska is a strong advocate of municipal ownership. He said that the recent adoption of the initiative laws by direct vote of the people relative to the extension and wider use of the municipally owned power plant in Nebraska, will mean additional comfort and convenience to the people in the rural communities, and also saving of hundreds of thousands of dollars to the users of electricity throughout the state. He believes that it will open a new era in electric light and power development that has long been denied to the people through the po-

## PUBLIC UTILITIES FORTNIGHTLY

litical influence of privately owned plants. He recommended legislation permitting the organization of irrigation and power districts and said that existing irrigation districts ought to be permitted by law to generate and sell electric light and power. Such a law, he declared, would enable the irrigation districts having water power possibilities to develop such power, and by the profits on the sale of the current help pay the cost of irrigation.

**G**OVERNOR LaFollette of Wisconsin strongly urges public ownership and operation of public utilities. He says that this was one of the objectives of the original legislation on public utilities in that state. In his message he declared that a careful examination of the experience of other communities demonstrated the wisdom of two forms of public competition; direct municipal ownership of power units and publicly owned corporations capable of supplying wider market areas and of integrating the local and district public system with the private utilities. He also recommended a constitutional amendment providing that municipally owned utilities may be financed by mortgage bonds instead of through the general municipal borrowing powers included under a 5 per cent debt limitation. He then said:

"More important than this is the adoption of a constitutional amendment authorizing the state of Wisconsin to provide if it so desires a statewide publicly owned power system. When the roll is called on this amendment, every legislature must choose between Wisconsin and the power trusts. It will be an acid test dividing the reactionary from the progressive."

"Pending adoption of these constitutional amendments we need not mark time. Every means permissible under the existing constitutional provisions should be utilized for developing a comprehensive power program. Legislation designed to give municipally owned plants larger opportunities for economic development through the organization of power districts is prepared and ready for your consideration."

**T**HE development of water power resources of the states for the generation of electricity by the states and disposition of it by wholesale is, of course, a partial experiment in government ownership. This was recommended by Governor Roosevelt of New York. He said:

"I trust that action will be taken at this session providing for water power development by a public agency for the purpose of producing cheaper electricity for the people of the state."

Governor Floyd B. Olson of Minnesota also recommended a constitutional amendment which will enable the state to control and develop those water power facilities, watercourses, and other natural resources which still remain part of the public domain.

On the other hand, Governor Meier of Oregon recommended the creation of a hydroelectric commission of three



**Q**"MORE important . . . is the adoption of a constitutional amendment authorizing the state of Wisconsin to provide if it so desires a statewide publicly owned power system. When the roll is called on this amendment, every legislature must choose between Wisconsin and the power trusts."

—GOVERNOR LAFOLLETTE OF WISCONSIN.

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members to investigate and study the water power resources of the state, and the most feasible method for their development and utilization including development costs and available market for power. The commission he thinks should cooperate with the Federal Government and adjoining states in regard to any project in interstate waters. Under his suggestion the water powers would not be developed by the state itself, but by private corporations or municipalities under licensed provisions safeguarding the public interest.

This is all that was said and recommended by the governors which could be construed as indirectly questioning the effectiveness of regulation. But the opinion that the state regulatory commissions are not functioning in the interest of the people is not held by all of the governors as their messages to the legislatures indicate.

**G**OVERNOR James Rolph, Jr., of California, for example, had this to say of regulation in that state:

"Effective regulation of public utilities has been one of the best and most outstanding achievements of the progressive movement in California. Its benefits have fallen alike upon the public and the companies. Formerly the great corporations were the masters of the state. Regulation has made the utility corporations public servants entitled to public respect and assistance. If we are to preserve the benefits of regulation, we must see to it that regulation is administered by officials friendly to the idea and spirit of regulation. The utilities as well as all other parties are entitled to just treatment from regulating bodies."

The outgoing governor, C. C. Young, stated that benefits of regulation from the standpoint of the public utility patrons reached record figures during the last two bienniums. Reductions in rates during that time, he de-

clared, totaled more than \$20,000,000 as against increases of approximately \$3,500,000, each of the figures representing the decrease or increase per annum. He said that the denial of requested increases aggregated more than \$3,700,000. A large number of decreases in rates, he declared, were made voluntarily by the utilities rendering rate proceedings unnecessary; that compared with the cost of maintaining the commissions, which is about \$500,000 a year, regulation had produced measurable results to the users of utility service.

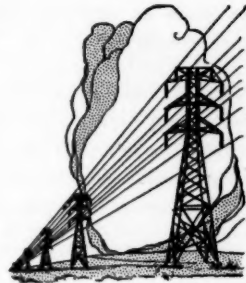
The California Commission, by the way, has had its troubles from the political angle. Some years ago it was subjected to a legislative investigation, the first of its kind. The legislative commission was hostile to the commission, but after the investigation the members frankly admitted that they were mistaken and made a report highly flattering to the commission. This was a considerable triumph for the commission because men who have formed opinions and expressed them seldom change their viewpoints as the result of investigations.

**T**HE amount of work handled by the commissions is not often appreciated by the public. Ex-Governor Young stated that the California Railroad Commission had been a party to 225 court cases involving its jurisdiction or upholding its orders during the nineteen years since it was reorganized in its present form. He said that but 17 of these cases were actually lost; and that in view of the fact that the commission had issued approximately 23,000 orders during

### The Threat of Federal Interference with State Regulation

**"T**HE Interstate Commerce Commission is continually reaching out and absorbing the jurisdiction of state commissions in dealing not only with interstate questions but also with intrastate cases on the theory that intrastate rates are reflected in interstate rates. If this tendency continues, it will ultimately destroy the powers of state commissions and take away from state governments many of their rights over utilities within their borders."

—GOVERNOR EMMERSON OF ILLINOIS.



that time and that it had been reversed in less than one tenth of one per cent of its decisions. This is a pretty effective answer to the charge that the course of regulation is being interrupted by the volume of court cases involving appeals from commission decisions, at least as far as California is concerned.

Governor Louis L. Emmerson of Illinois also speaks favorably of the work of the Illinois Commerce Commission. He said that the commission was completely reorganized during the last biennium and had made a determined effort to clear its docket of all old cases and had adopted a policy of giving prompt consideration to all matters before it. He stated that in the biennium 1,703 applications, complaints, or petitions had been filed; 2,449 hearings had been conducted; 3,980 orders had been passed; and 10,818 informal cases had been filed. The commission, he said, had authorized the issuance of \$281,223,820 in stocks and bonds and had collected \$127,768 in fees.

As a result of hearings conducted during the two years, the commission had reduced electric service rates in 2,224 communities; gas rates in 42 communities; and water rates in 3 communities.

**T**HE attitude of Governor Henry S. Caulfield of Missouri must also be taken as friendly to regulation. In his message to the legislature he said that the 55th general assembly had made an increased appropriation out of fees earned by the public service commission to enable the commission to make valuation and audit of public utilities; that previously the commission had been hampered in this important work by insufficient appropriation although the expense of such work was not payable out of the state treasury; but as a result of the increased appropriation during the years 1929 and 1930 the commission had done almost five times as much of this valuation and auditing work as during the preceding two years.

The governor recommended that in-

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creased appropriation out of fees be continued to enable the commission to make valuation and audit of all the important public utility property in the state so that regulation may be more effective.

**O**UTGOING Governor Charles W. Toby of New Hampshire is firmly convinced of the value of regulation to the public. He said:

"One of the most important departments of our state government is that of the public service commission. Created during the administration of Governor Bass, the value of its services is now generally recognized, both by public service corporations and the public at large. Its duties are many; it must act often in a judicial capacity, hearing both sides of matters pertaining to public service affairs, to see that justice is done. The legislature during this present administration, realizing the importance of this department, passed several laws which have given the commission increased power, and are manifestly in the interests of the people of our state."

The incoming Governor John G. Winant recommended control over the security issues of holding companies for the protection of investors.

**V**ERMONT also furnishes its testimony as to the effectiveness of regulation. The outgoing Governor John E. Weeks says that as a result of the expenditure of \$5,000 appropriated by the legislature in 1929 authorizing the investigation of electric rates, the public service commission had been able to cause a reduction in those rates largely confined to residential service which is conservatively estimated at an annual saving of \$145,000 based on the same amount of electricity consumed under the old rates for the year preceding. Because of the success of this undertaking he recommended that the appropriation to the commission be continued in

order to permit studies to be made regarding present sound values of utility property and the cost of service to the consumer to the end that further reduction in electric and gas rates might be accomplished.

The incoming Governor Stanley C. Wilson merely recommended that a study be made of the taxation of public utility companies the present basis of which he deemed to be unsatisfactory.

**T**HE message of Governor William G. Conley of West Virginia must also be regarded as friendly to regulation. It contained a brief outline of the scope of the commission's work and stated that it had investigated and passed upon 4,300 formal cases and 2,063 formal cases since its organization.

**T**HE fact that regulation is asked for in some states may be taken as evidence of a belief that it is beneficial to the public. Iowa is one of the few states which have allowed the regulation of public utilities to remain in the hands of the local authorities. Governor Dan W. Turner recommended that adequate laws be enacted for their regulation by the state. He said that an adequate method should be provided for arriving at and determining the value of the properties of public utilities in the state; that this would assist in the matter of rate making and would be of benefit in connection with the taxation of these companies.

Minnesota is another state in which the railroad and warehouse commission has had limited authority over public utilities. Governor Floyd B. Olson recommended a study for

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the purpose of proposing a plan for the better regulation of the rates charged and the service rendered by public utility companies. He also urged that the supervision over telephone companies be extended so as to cover investment and expenditures; and that proper appropriation be made for the accomplishment of that supervision.

**T**EXAS is a third state in which the regulatory power of the commission over utilities is weak. Both the outgoing Governor Dan Moody and the present Governor Ross S. Sterling recommend the regulation of utilities by the state. Governor Sterling said:

"Public utilities in the state have grown to vast proportions and in their very nature partake of monopolies. Such utilities are entitled to a reasonable return on the property devoted to public service and the consumer is entitled to efficient and reasonable rates. Texas has no adequate utility regulation; therefore, we advocate legislation for the proper protection of the consuming public."

On the other hand, Governor Meier of Oregon who has, as previously stated, felt that regulation in Oregon has proven an utter failure advocates the extension of home rule. He recommended that legislation be enacted extending the home-rule principle with adequate safeguard to municipalities so that they may enjoy if

they so elect the right to contract by franchise or otherwise with any public utility as to rates, service, and facilities within their respective boundaries.

Aside from any question as to the success or failure of regulation a number of recommendations were made concerning regulatory problems. The question as to the desirability of regulating holding companies was considered by several of the governors.

**G**OVERNOR Joseph B. Ely of Massachusetts recommended the proper regulation of holding companies which he said are now the means of circumventing the present laws of the commonwealth in reference to the regulation and ownership of utilities. He said:

"We have no desire to interfere with or retard the reasonable and proper operation and growth of utilities and it would seem advisable to consider in this matter a change of our present practices in regard to their ownership, control, and management which would simplify the whole subject matter and bring them directly under state control and regulation."

The governor also sounded a note of alarm as to the "steady penetration of our railroad life by the Pennsylvania railroad interest." He said that the control over the New England



**Q**"EFFECTIVE regulation of public utilities has been one of the best and most outstanding achievements of the progressive movement in California. . . . Regulation has made the utility corporations public servants entitled to public respect and assistance. If we are to preserve the benefits of regulation, we must see to it that regulation is administered by officials friendly to the idea and spirit of regulation."

—GOVERNOR ROLPH OF CALIFORNIA.

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railroads had been and is steadily being acquired by an alien railroad organization whose primary interests do not lie in Massachusetts or New England. He recommended a commission to determine the extent to which this control over those railroads had been extended and to devise such methods as might be available to counteract or prevent it.

Governor Winant of New Hampshire favored the regulation of holding company securities or financing. He said:

"We cannot tolerate any policy that will leave the New Hampshire investor pitted against the New Hampshire user of light and power with the third party in fact the guilty profiteer."

Governor Meier of Oregon recommended a specific method of dealing with holding companies. He would limit and circumscribe the right of one public utility corporation to contract with another corporation for service or the use of property or the purchase of property or supplies, when:

"The public utilities corporation owns the majority of the voting stock of the other contracting corporation, or;

"The majority of the voting stock of the public utilities corporation is owned by the other contracting corporation, or;

"The majority of the voting stock of the public utilities corporation and the majority of the voting stock of the other contracting corporation are owned by a third corporation."

Governor LaFollette of Wisconsin mentions the increasing concentration of control of public utilities into a few holding companies as one of the reasons for a thorough reconstruction of the technique and procedures of regulation.

Other recommendations of the governors deal with such questions as

increased power of the commissions over accounting, security issues, rural electrification, and increased appropriations for salaries and other expenses of the commissions.

SOME new policies of the commissions are alluded to. Ex-Governor Young of California, for example, called attention to the fact that the railroad commission of that state has adopted a new policy in fixing public utility rates which resulted in immediate benefit to the general public on a large scale by establishing reduced interim rates for both gas and electricity. These rates, he says, are to prevail during the continuance of major rate proceedings that show indication of being drawn out unduly pending the fixing of complete rate basis upon which so-called permanent rates may be established.

He also mentioned the so-called "ceiling rule." The rule is that a company having a far-flung business in the state which is on a reasonable and normal earning basis as a whole may not pick out one section where its earnings are subnormal and obtain a rate increase there without expecting a decrease somewhere else so that its over-all-state earnings will not be augmented. The application of this rule, said Ex-Governor Young, resulted in offsetting necessary increase of rates of approximately \$2,100,000 a year to the Bell system in northern California by a contemporaneous reduction of \$2,300,000 for the Bell Company operating in the Los Angeles area.

Governor Cross of Connecticut recommended that the information as to rates for light, power, and gas in

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**Q** "We have no desire to interfere with or retard the reasonable and proper operation and growth of utilities and it would seem advisable to consider in this matter a change of our present practices in regard to their ownership, control, and management which would simplify the whole subject matter and bring them directly under state control and regulation."

—GOVERNOR ELY OF MASSACHUSETTS.



different localities in the state now available at the capital be published in such form as to make the knowledge generally known to consumers to the end that if they feel aggrieved they may speedily direct the attention of the commission to the situation.

**G**OVERNOR William H. Murray of Oklahoma would set limits to regulation. He recommended that the control by the corporation commission or any other board or regency of the state over the granting of permits or authority to engage in the ice manufacturing business or in ginning cotton be taken away. He said that the policy of requiring permits for any business other than public service corporations is a very defective economic policy, or that it partakes too much of an arbitrary power and leaves too much room for corruption, bribery, and favoritism in the exercise of business pursuits of the citizens; and that it invariably results in monopoly. No private citizen, said the governor, and but few private corporations, should be required as a precedent in any business other than that requiring peculiar technical training to secure a permit before engaging in business.

**G**OVERNOR Emmerson of Illinois brought up the question of Fed-

eral encroachment on state regulatory powers which has been so actively resisted by the various state commissions. Governor Emmerson said:

"The Interstate Commerce Commission is continually reaching out and absorbing the jurisdiction of state commissions in dealing not only with interstate questions but also with intrastate cases on the theory that intrastate rates are reflected in interstate rates. If this tendency continues, it will ultimately destroy the powers of state commissions and take away from state governments many of their rights over utilities within their borders."

**F**ROM these recommendations of the governors some idea may be gained as to how regulation is regarded from the standpoint of political leaders. One thing is quite certain: The belief that regulation has failed and that the public has received no benefit from it, is not widespread, as a comparatively small group of political leaders, writers, and talkers would have us think.

Persons accustomed to weighing evidence will be much more impressed by statistics such as those mentioned by Ex-Governor Young of California, indicating the amount of business transacted by the commissions and the savings in dollars and cents to the ratepayers, than they will by general declarations that the utilities are charging exorbitant rates and that existing utility commissions have no

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mind to really protect the public.

The most serious tendency from an economic standpoint that seems to be resulting from the agitation against commission regulation is toward the establishment of municipal and governmental enterprises for the purpose of substituting public competition for regulation. Some merely suggest the establishment of municipal plants for this purpose; Governor LaFollette of Wisconsin, however, goes to the end of the road so far as that state is concerned. He would like to see a state-wide publicly owned power system. He says that every legislator must choose between Wisconsin and the power trusts." Whether he wants the state to take over the entire business or merely to act as a competitor with private interests does not appear from his first message on that subject.

**B**UT competition between a publicly owned plant and a private plant for the purpose of reducing rates is just as bad economically as competition between privately owned plants. In fact, it is worse because it is conducted on an unfair basis. The municipal or state-owned utility is usually preferred in the matter of taxes and regulation. In addition to that, when the proposal is made to develop water power by the state for the generation of electricity to be sold to public and private enterprises, it seems to be a very popular belief that the public or municipal enterprises should be favored still further; that they should get the power first if they want it. This demand is made notwithstanding

the fact that the customers of the private utilities bear as much of the tax burden of the governmental power project as do the customers of the municipal plants.

Competition between utilities of the same kind in a given field has been proven wasteful and expensive to consumers in the long run. It will be none the less so if competition arises to any extent between publicly owned and privately owned utilities. Building municipal plants merely for the purpose of competing with privately owned utilities in order to reduce rates is economically unsound. It is a much more costly form of rate control than that afforded by the modern policy of regulation of public utilities by state commissions properly equipped and financed.

Whether all utilities should be owned and operated publicly is another question.

Not all of those who are leading the fight against the state commissions are believers in government ownership.

**O**N reading over the recommendations of the governors, one does not find a very widespread belief in the need for governmentally owned and operated utilities as competitive threats against high utility rates. This, however, will probably be advocated with increasing fervor by those who favor the theory that competition is the life of trade, even in the public utility field; and it will be advocated by those who pin their faith on government ownership.

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*"The Fallacies of Government Ownership," as viewed by R. HUSSELMAN, will appear in the coming issue of this magazine—out April 16th.*



## How Vulnerable Are Public Utility Stocks?

### The Views of a Country Banker

Now that public service corporations are being subjected to attack by certain politicians, and the present system of commission regulation is being subjected to critical scrutiny, the speculative factor in utility securities is assuming some proportions. To what extent will this political agitation affect market values? How soon will it affect them? What does the immediate as well as the remote future hold for them?

*As told to*

FREEMAN TILDEN

As I write this, the stock market is doing as well as can be expected, thank you, considering its low blood pressure, incident to the weakness that follows a major operation. All it needs is a long rest in bed, with a guard around the premises to see that the super-optimists don't sneak into the sick room and give the patient a shot of Old Doctor Taurus' Provocative Pep for Pale People. Convalescents have been hurried to the cemeteries over this route. The patient responds to the dope marvelously for a few hours, shakes hands with everybody feverishly—and dies that night.

Of course, the present Sargasso calm is painful for the boy wonders who graduated from college in June, became titans of finance in August, wrote books on investment in September, and found themselves caress-

ing the cobblestones shortly afterward. It is painful for the operators whose silk pajamas accrue from the public desire to get rich before tomorrow afternoon. The position of the "professionals" reminds me of a trip I once made on a Cunarder, out of New York. Among the passengers were three shiny gentlemen who made their livings entirely through their skill in dealing cards from the bottom of the deck. But the captain knew them, and his mouth tightened when he saw them walk aboard his ship.

Before the Cunarder was past Montauk Point, the Captain had informed all the male passengers that they could play cards as much as they chose, but if they did so with these three men, they were in peril of their currency. So there was no gambling on that trip, except for the wild plunging of a group of old ladies,

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who attacked each other ferociously at auction bridge, at a half cent a hundred points.

Well, how did the card sharks spend their time? Why, naturally, they had to do something, so they got up a little game among themselves, and tried to wrangle a day's pay out of one another, being forced to play an honest game from the fact that each man knew all the dirty tricks.

AT the present time the gentle public is out of the stock market, and the best the professionals can do is to bat the issues back and forth and try to make a day's pay. The desire to get something for nothing is temporarily *hors de combat*; the present public desire is to get something for something—and keep it.

Now, how does this situation affect the small town banker? What is he buying for the bank? What is he buying for his customers? What is he doing with his trust funds? Is he laying up treasures in heaven while good stocks are selling to net 5, 6, and even 7 per cent? And if so, what good stocks? Is he salting away gilt-edge bonds of the "institutional" type, or buying bonds with an equity privilege, or taking a chance on foreign governments that will net, if they don't collapse, 10, 12, or 14 per cent? Is he . . . but what's the use? Why not ask the question at once:

"What is he doing?"

For a quick answer I'll say that he is busy. He is busier than the reader's optic nerve in a trolley car. He is busy atoning for his own sins and for the sins of his more speculative brothers. The small town banker is

not only between the devil and the deep sea; he is among three and four devils and as many oceans. The individual investor can go into the market or stay out of it, just as he likes. The banker cannot. He is forced to keep his funds working, one way or another. Many's the time a conservative banker would like to convert the entire assets of his bank into cash, give it back to the depositors and stockholders, bang the bronze doors of his institution behind him, and go into a monastery. This happens to be one of the times. But it can't be done. The word is, "Carry on."

LET us take, for example, a small-town bank with a state charter, operated in a conservative eastern community by a capable banker and good directorate; a bank with both a commercial and a savings department, and permitted to administer trusts. Add to this set-up a group of intelligent customers with more or less money to invest; a group of clients who look to the local banker for sound advice; and you compass in a general way the activity of this bank on the investment side.

We have seen, in the year just past, two amazing banking situations, exactly polar; banks heavily frosted over with congealed assets, and either forced to close their doors, or to stagger on as best they could against the cumulative force of whispering campaigns and dwindling deposits. And, on the other hand, we have seen fortunate banks that, having escaped this curse of frozen paper, have hastened to put themselves in such a position of liquidity that they cannot make any money for themselves, and can

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scarcely do justice to the ordinary and justifiable demands for money.

I have in mind two solvent banks in my state, that represent these poles. One of them possesses an amount of quickly negotiable paper in excess of the amount of deposits. The other one has slow loans in excess of its deposits, meaning that it has dipped into its capital and surplus. With good commercial paper bringing only a trifle more than 2 per cent, the first-mentioned bank is making no money, or very little. And the other bank is extremely lucky to be situated in a district which has curiously escaped the worst rigors of the depression. Otherwise it would long since have been decorated with one of those diplomas that the unimaginative bank commissioners callously pin upon doubtful doors.

**B**UT suppose we take the extremely conservative tack in this doubtful time. Suppose we maintain the utmost of liquidity at the expense of profits. Suppose we cut down our savings-bank dividend rate to the point from which it probably never should have raised in the first place. Suppose we comb through the portfolio, sell the doubtful and the depreciated securities, or write them down to a market value that will give a

margin under even present quotations. After all is said and done, we must keep on buying, for the bank, for ourselves as individuals, and for our trusts and clients. And we must keep on giving advice. We hate to call it giving advice. We steadfastly deny that it is advice. We dwell defensively on our phrase, "Now, understand, this isn't advice; it's merely a broad investment attitude I'm describing." That's all very well, but of what use are we to our customers if we don't come down to cases?

A woman comes into the bank and says she wants to buy some stock. "What stock have you in mind, madam?" She says she has been told that Peanut-Bar Preferred is selling all out of line, and has great possibilities. You know perfectly well that Peanut-Bar Preferred isn't even good for peanuts, let alone for a woman who can't afford to lose her money. You give her advice, don't you? Of course you do; and you should. If you don't know more about the potentials of stock than a woman of this sort, you shouldn't be in the bank.

Now, I say, since you are forced into this business of advising, it is best not to pussyfoot about it. Do it openly and honestly, wherever it is possible. There are stocks, the pur-



**Q** "THE IF that gives me pause, in relation to utility stock, is the uncertainty as to what the Crusaders of Congress have up their sleeves. Not only Congress, either. The state legislatures, also. Still, as I said before, you can't have idle funds in a bank. . . . And, as I look around at the stocks, unwilling to put too many of my fiduciary eggs in one basket, the utilities look like the least of all evils."

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chase of which by people who insist on having common stocks, you can advise with as much certainty as can exist in a hectic and uncertain world. The amount of money that has been lost by investors, acting on the "advice" of honest bankers, is a mustard seed in a firkin compared with the amount that has been lost by unguided investors, or those that have been cajoled by dopesters, touts, and market-letter wolves. There is no such thing as absolute safety in investment. But there is a definitely graduated scale of risks. A banker knows this scale.

**L**IKE all generalizations, that sounds simple and easy. But in the concrete, it is a lot easier, of course, to say what should not be bought, than to say what should be bought. The lady in the paragraph above brought in an investment polecat called Peanut-Bar Preferred. One smell of that opportunity made the answer easy. But suppose she comes in and says:

"I want to buy some stock. No, I don't want bonds, I want stock. No, I don't want to put the money in your savings bank. I want stock. I want a stock that is reasonably safe, that returns a fairly good rate, and that is likely to be worth more in the market three years from now than I shall have to pay for it now."

That's talking turkey, eh? Indeed, that's precisely the stock you feel it vitally necessary to buy for the living-trust just created by Henry Hutchinson, of Maple street, with your institution.

Suppose the lady visitor continues: "From what I have heard, it seems

to be that the sort of stock I want is to be found in the public utility class. What do you think?"

Now, with all your worries, you can't dodge this question. You are facing it every day, too. What are the considerations that govern your answer? They will be the considerations that govern your buying for the bank.

**F**IRST you tell the lady that there are "good" public utilities and others not so good. That's always safe, because it's always true.

Then you say, and truly, that as between stock in a public utility near home, and one thousands of miles from home, soundness nearly equivalent, it might be usual prudence to pick the nearest one. It may operate in your own town. How does it operate? What is the attitude of your own state authorities toward it—toward utilities in general? Are the customers satisfied with it? It is by no means certain that the one nearest home is the best, of course. It might be the poorest.

Sooner or later, however, you must get down to the basic question:

"How good are public utility stocks, as a class? How vulnerable are they to nonfinancial attack? If they represent integration of many units, what has this integration done to the fundamental values? If it is a question of a holding company—and it probably is—how conservatively or recklessly was the grouping accomplished?"

**I** AM one of those who believe two things about public utilities, investmentwise, that are so opposite that I have to consider both points of

### The Two Outstanding Factors About Utility Securities:

**"I** AM one of those who believe two things about public utilities, investmentwise, that are so opposite that I have to consider both points of view simultaneously, with the aid of aspirin. One is, that a 'good' public utility stock is the best stock purchase in the whole junior investment field today. I am certain of this. . . .

*"I am equally certain that public utilities are due for more congressional activities, legislation, inquiries, and regulation, in the near future, than will be good for them as investments."*



view simultaneously, with the aid of aspirin. One is, that a "good" public utility stock is the best stock purchase in the whole junior investment field today. I am certain of this.

Mind, I say, "today." I don't know what will be best five years from today. Who does? But my other point of view barges into this paradise of certainty like a janitor interrupting a symphony.

I am equally certain that public utilities are due for more congressional activities, legislation, inquiries, and regulation, in the near future, than will be good for them as investments. You can see it on the horizon, like a western Kansas cyclone, just rolling up.

I hope I am wrong about this. I shall be money in pocket, and I believe the public will be money in pocket, if no such march of the legislative heroes—all generals in the army of Virtue—takes place. But I think I see it coming.

Besides, to be absolutely frank about it, the public utilities have done something to invite it. I firmly be-

lieve that it would have been far better had the integration of power and light companies, for instance, been more soberly and slowly conducted. It is all right to be a giant, but it is not always well to let everybody know you are a giant. Small people feel disturbed when there are giants around.

**L**ET me give you an instance of the suspicion that soaks into the minds of folks, and is hard to eradicate.

A big holding company snapped up the light and traction company in a city near me, a few years ago. They could have bought the stock of this unit company, had they gone about it in a quiet, unobtrusive way, for less than \$100 a share. I owned some of the stock and I would have sold for less than a hundred. The traction side of the business was decidedly sour. These giants paraded into town and offered \$160 a share for the stock. Did they get it?

They did.

Immediately everybody was sus-

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picious. People said, "They have paid any old price for that stock, because they plan to take it out of our consumer hides, later on. Watch the rates go up!"

The rates have not gone up. I believe that, while the price paid was not justified, the real economies practised by this larger and abler corporation have resulted in consumer benefit. But you can't tell folks around here that this holding company is not laying for the consumer with a spiked club. Here you have a condition created by either the stupidity or the wilfulness of officials of a great corporation, in being too abrupt and magnificent.

But the consumer's attitude of suspicion is not the only phase of the damage. None of my customers will buy a single share of this holding company's stock, though in my opinion it is sound. Knowing the absurd

price paid for our local concern, they shake their heads shrewdly and say:

"Not for me, if that's the way they bought up all their units!"

ALL, all investment opportunities have an IF attached to them! The IF that gives me pause, in relation to utility stock, is the uncertainty as to what the Crusaders of Congress have up their sleeves. Not only Congress, either. The state legislatures, also. Still, as I said before, you can't have idle funds in a bank; you can't refuse your customers the best opinion you possess; and you have trust funds to invest. And, as I look around at the stocks, unwilling to put too many of my fiduciary eggs in one basket, the utilities look like the least of all evils.

But this statement is like a railway time-table—subject to change without notice.

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### According to the Newspapers—

ALL of the decisions of the public service commission of Porto Rico are rendered in Spanish.

THIRTY-TWO detectives and plain-clothes men circulate among the crowds in Grand Central Station, New York.

THE largest telephone booth ever built was located in the White House during its occupancy by President Taft.

THE Finnish government's telephone service is confined exclusively to long-distance; no local connections are made.

EARLY electric light lamps were exhibited in circuses along with the other wild animals that man had captured and subjected to his domination.

THE average American family, from 1915 to 1925, paid nearly four times as much for groceries as it now pays for all utility services combined.

A TWO-MILLION dollar power plant is being installed which will utilize the differences in temperature of tropical waters to generate electricity.

THE volume of horsepower generated by the 100,000 slaves who worked twenty years building the Pyramids of Egypt is now generated in seven weeks by the electric power companies of Illinois alone.

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# Remarkable Remarks

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*"There never was in the world two opinions alike."*

—MONTAIGNE

BAINBRIDGE COLBY  
*Former Secretary of State.*

"The great thwart to the efficiency of public regulation is the holding company."

*An editorial writer in  
"National Sphere."*

"Truth is the best propaganda, but it is difficult to convince publicity directors of that simple fact."

JAMES B. WOOTAN  
*Editor, "Public Service  
Management."*

"The holding company is just as essential to the successful operation of public utilities as adequate rates and fair regulation."

J. F. DEASEY  
*Vice President, Pennsylvania  
Railroad.*

"Under no circumstances do I advocate regulation for the purpose of restricting highway competition for the benefit of rail carriers."

ROGER W. BABSON  
*Economist and statistician.*

"In a quiet, nonspectacular way the public utility industry has done more to stabilize and support business conditions in 1930 than any other industry."

T. J. SMITH  
*Editor of "So The People  
May Know."*

"The National Electric Light Association is the most gigantic political and false and misleading propaganda machine that has ever attempted to control any nation."

GEORGE ROTHWELL BROWN  
*Newspaper columnist.*

"Citizens' association asks the public utilities commission to insist on an improved quality of gas, and lower pressure. Well, Congress adjourns today, and that's service!"

JOSEPH B. EASTMAN  
*Of the Interstate Commerce  
Commission.*

"The time is coming when the railroads have got to use motor trucks as an auxiliary, give store-door delivery, perhaps using motor trucks as a substitute for certain forms of their real service."

DR. PHILIP CABOT  
*Professor of Public Utility Man-  
agement, Harvard University.*

"I think the theoretical economists as a class are doing great harm. Until their views can be revised so as to bring them in harmony with the world in which we live, this will continue to be the case."

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F. H. LA GUARDIA  
*Congressman from New York.*

"If the same accountancy practices and returns allowed the gas and electric companies by our corporate minded courts were applied to any municipal water system, the price of water would be about twenty-five cents a gallon."

CALVIN COOLIDGE  
*Ex-President of the  
United States.*

"For the United States to go into the electrical business would be a gross misuse of its powers and involve it in all kinds of political abuses. The thing to do with Muscle Shoals is to dispose of it to private interests with suitable restrictions."

GIFFORD PINCHOT  
*Governor of Pennsylvania.*

"Here in Pennsylvania a carefully planned, elaborately financed, and powerfully directed attack on the rule of the people under the law has made substantial progress. It aims to substitute government by the public utilities for government by the people."

JOHN J. RASKOB  
*Chairman, Democratic Executive  
Committee.*

"There is no more reason for attacking and destroying confidence in any industry as a whole because of the crookedness of a few companies than there is of attacking our whole banking system because of the crookedness of a few banking officials."

WILLIAM S. LEE  
*President, American Institute of  
Electrical Engineers.*

"Government ownership takes from the people the great incentive to endeavor which has been the birthright of the American people and made us what we are, leaving for them but a government job and their status mere government serfs and vassals of a feudal system."

MORRIS LLEWELLYN COOKE  
*Engineer and publicist.*

"We have come through a period of twenty years during which the electrical industry, under the leadership of the National Electric Light Association and other propaganda agencies, has carried on through the newspapers, in the schools, on the lecture platform, and elsewhere a campaign of almost unbridled misrepresentation."

HERBERT HOOVER  
*(In his message to Congress in  
veto of the Muscle Shoals Bill.)*

"I am firmly opposed to the government entering into any business the major purpose of which is competition with our citizens. There are national emergencies which require that the government should temporarily enter the field of business, but they must be emergency actions and in matters where the cost of the project is secondary to much higher considerations."



# The 15-Point Program for the Control of Water Power

How the business men of the country stand in the controversy  
between government and private ownership

## FACTS ABOUT THE REFERENDUM:

THE fifteen propositions were submitted to the 1,600 and more member organizations of the United States Chamber of Commerce on November 7, 1930; the balloting closed December 22, 1930, on which date 1,158 organizations had filed votes; 3 organizations did not vote but filed opinions; 22 organizations filed their ballots too late; in voting, each organization cast as many ballots as it may have delegates at the annual meeting of the Chamber—which varied from one to ten, dependent upon the size of its membership.

By MERLE THORPE

**T**HE clearest kind of indication that the country's business interests have no patience with the current political hue and cry against the power industry is to be found in the results of the recent referendum taken by the Chamber of Commerce of the United States on National Water-Power Policies.

By an overwhelming vote, the more than sixteen hundred member organizations of the National Chamber adopted a platform of fifteen principles setting forth the belief of business men that the development and distribution of electric power should be left to private enterprise.

**T**HE power problem is one of our hardest political perennials. Whenever a professional friend of the people is hard put for an issue, he can always fall back upon that

durable bogey—"The Power Trust." In former days it was the "Bread Trust," the "Harvester Trust," the "Sugar Trust," the "Meat Trust." Just now the politician points his finger at and lifts his voice against power.

The nation-wide ballot by business organizations on water power policies was taken after two years of special committee preparation. Members of the committee were selected with a view to having a wide business and geographical representation. Their charter was to bring forward suggestions for a national water power policy that might be generally adopted as in the interest of the public and of the industry. The members of the committee were:

Frederic A. Delano, former railroad executive and former member of the Federal Reserve Board, chairman.

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Thomas S. Baker, president, Carnegie Institute of Technology, Pittsburgh.

Arthur S. Bent, former president, Associated General Contractors of America and senior partner, Bent Brothers, Los Angeles.

Frank P. Glass, president and publisher, the Montgomery *Advertiser*, Montgomery, Alabama.

Lafayette Hanchett, chairman of the board, Utah Power and Light Company, Salt Lake City.

David C. Henny, consulting engineer for United States Bureau of Reclamation, Portland, Oregon.

Horace W. King, professor of hydraulic engineering, University of Michigan, Ann Arbor.

Charles H. MacDowell, vice president, Armour and Company, Chicago.

Frank I. Mann, farmer and farm lecturer on soils and fertilizers, Gilman, Illinois.

Harold G. Moulton, director, Institute of Economics, Washington.

Richard E. Norton, vice president, C. H. Geist Securities Corporation, Philadelphia.

Lewis B. Stillwell, consulting engineer, New York city.

**T**HE proposals of the committee, as adopted in the vote, indicate the part that should be played by the Federal and state governments in the regulation and control of water power development and operation.

The platform of proposed principles, as advanced by the committee and as voted on, follows:

1. That Federal and state appropriations should be increased for the collection and publication of data relating to water resources.

2. That the Federal Government should leave to the states all possible control over utilization of water resources within the states.

3. That each state should have an agency to promote and regulate development of its water resources.

4. That the states should use compacts among themselves for determination of their respective rights in boundary and interstate streams.

5. That through adequate appropriations, and through methods of appointment and compensation for members and staff, state commissions should be enabled to discharge their duties with the greatest possible efficiency.

6. That state commissions should be authorized to initiate proceedings in which they may exercise their regulatory powers, including proceedings as to disparities in domestic rates.

7. That every effort should be made by regulatory bodies and utilities to reach by agreement the valuation to be placed on properties used for public service.

8. That interstate power, so far as now incapable of regulation by states, should be regulated through concurrent action of state agencies made effective by the Federal Power Commission, and only in the event of failure of concurrence on the part of the state agencies should be regulated directly by the Federal Power Commission.

9. That municipally operated utilities should be subject to the same regulation as privately operated utilities.

10. That the Federal Power Commission should avoid duplication by utilizing the field services of other agencies of the Federal Government.

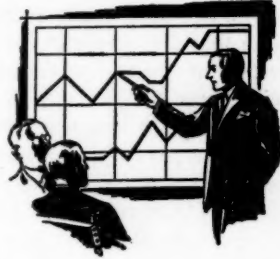
11. That development and distribution of electric power is within the proper sphere of private enterprise.

12. That the Federal Government should leave the construction of dams and other structures and the generation of power to other agencies, ex-

"As I Look Over the Results of the Balloting—"

**I** DISCERN a pronounced feeling against the increasing trend toward centralizing the powers and functions of government at Washington. I find a robust declaration toward a greater adequacy of the states in dealing with problems of regulation and development, rather than centering these problems at the National Capital. I see a new definition of the old doctrine of 'states' rights.'"

—MERLE THORPE.



cept where they are an essential part of national or international projects that cannot be successfully carried out by other agencies.

13. That the Federal Government should always leave the transmission and distribution of power to other agencies.

14. That the state governments should leave development and distribution of power to utilities which they effectively regulate.

15. That the Muscle Shoals project should be sold or leased, as is, on the best possible terms.

**T**HE referendum system of the Chamber of Commerce of the United States was established eighteen years ago for the purpose of obtaining the considered opinion of business interests on national economic questions. The member organizations of the country now embrace within their own membership nearly a million business men, representing the broadest possible base.

The referendum machinery is simple. The Board of Directors submits a committee report without comment of its own either in favor of or against the committee recommendations. In the referendum pamphlet,

however, there are given arguments in the negative against each of the propositions submitted, so that members voting will have the fullest information. In the case of the referendum on water power there was submitted in addition to the committee report and the arguments in the negative a comprehensive fact study of the entire subject.

**A**s I look over the results of the balloting I discern a pronounced feeling against the increasing trend toward centralizing the powers and functions of government at Washington. I find a robust declaration toward a greater adequacy of the states in dealing with problems of regulation and development, rather than centering these problems at the National Capital. I see a new definition of the old doctrine of "states' rights." I see a greater hope for localizing the exercise of government, for giving the community and individual a greater place in public affairs.

**W**HILE the referendum is limited to water-power resources, its

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principles, you will readily see, go to the heart of the whole question of the proper regulation and control of our public utilities. In adopting the principle that the development and distribution of electric power and light is within the proper sphere of private enterprise, the business men are voicing, I am led to believe, the real spirit of the nation. They merely reiterate a sturdy American philosophy, which is undoubtedly the greatest single

contributing factor to our industrial and commercial supremacy. They draw from their experience and economic observation the picture of the chaotic conditions in many foreign countries which can be traced, directly or indirectly, to the tendency on the part of those governments to discourage the principle of private enterprise and to substitute in its place the operation of business by bureaucracy.

### How "Government in Business" Ranks as a National Issue

"GOVERNMENT in business" ranks fifteenth in the list of the nation's interests—according to the recent poll of the members of the National Economic League. In view of the efforts which are being made to inject the regulation of public utilities into politics as a major issue, and to put the government into competition with private enterprise, the results of the poll assume a timely significance. The vote was as follows:

Prohibition .....	1,871
Administration of justice .....	1,750
Lawlessness, disrespect for law .....	1,514
Unemployment, economic stabilization .....	1,434
Law enforcement .....	1,398
Crime .....	1,315
World Court .....	1,106
Taxation .....	966
World peace .....	879
Efficient democratic government .....	708
Agriculture, farm relief .....	694
Political corruption .....	647
Tariff .....	624
Reconsideration of war debts .....	555
GOVERNMENT IN BUSINESS .....	529
International economic relations .....	510
Foreign trade policy .....	464
Reduction and limitation of armaments .....	462
Socialism, communism .....	460
League of Nations .....	456
Conservation of natural resources .....	442
Law revision, Federal and state .....	419
Revision of antitrust laws .....	392
Education .....	391
Centralization of money and power .....	387
Child welfare .....	386
Coöperation vs. competition .....	382
Moral and ethical standards .....	382
State rights .....	372
Individual liberty .....	362
Election laws .....	358
Old age pensions and insurance .....	350



## OUT OF THE MAIL BAG

### The Railroads Could Not Survive without Regulation

I HAVE just read Herbert Corey's article "What Federal Regulation Is Doing to the Railroads." I happen to be one railway man who does not believe it is practicable to avoid regulation by public authority. I think the railway companies would be unable to survive the vicissitudes of excessive competition were it not for the regulation of rates, and regulation of service, of course, follows.

—RALPH BUDD,  
*President, Great Northern Railway Co.*

### A Commentary on a Utility Clip Sheet that Was Justified

REFERENCES to this bureau in Alfred P. Reck's article in the February 5th issue of PUBLIC UTILITIES FORTNIGHTLY were most gratifying to me, and I hope you will pass on to Mr. Reck word of my appreciation.

Confirmation of Mr. Reck's opinion is seen in the fact that more than four hundred Texas newspapers are regularly using matter from *The Public Service News*, (the name of our weekly bulletin). Its circulation, however, is not confined to newspaper offices—although designed primarily for their use—and we have about two thirds of our circulation distributed to the general public through special requests.

—WILLIAM C. EDWARDS,  
*Director, Texas Public Service  
Information Bureau.*

### Varying Policies of Electric Companies in Merchandising Lamps

WE have been very much interested in PUBLIC UTILITIES FORTNIGHTLY, particularly in the issue of January 22, 1931, which carries the article "When A Utility Merchandises," by Francis X. Welch. There is a

slight misunderstanding as to the merchandising policy of this group, which is referred to on page 77 of the edition in question. Mr. Welch states:

"There is one legal point about merchandising that involves the specific matter of lamp renewals. Some electric companies (such as the Insull group) have long held to the practice of furnishing and renewing bulbs or lamps free as part of certain classes of commercial rates."

We are of the Insull group, yet our lamp policies do not conform to the policies of the Commonwealth Edison Company or the Public Service Company of Northern Illinois, both of which are of the Insull group. Our policy has always been to retail lamps at standard list prices. We have no free renewal arrangement whatsoever.

—C. J. EATON,  
*Vice President, In Charge of Merchandise and Service Sales, Middle West Utilities Company.*

### How to Make Economic Problems Popular

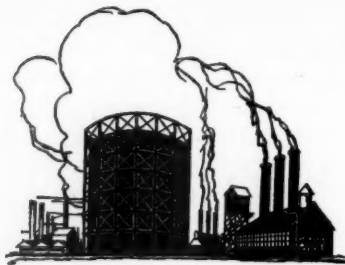
HERBERT Corey's article on "What Federal Regulation Is Doing to the Railroads," is a most readable piece of work. More of that sort of style should tend to popularize economics. You are to be congratulated upon the method of attack, if not upon all of the implications of Mr. Corey's article with respect to the railway attitude toward regulation.

—J. L. BEVEN,  
*Vice President, Illinois Central Railroad Co.*

### An Estimate of the Leadership of the Electric Utilities

THE article in the February 5th issue of PUBLIC UTILITIES FORTNIGHTLY by Raymond Francis Yates, "Will the Electric Utilities Lead Us Back to Prosperity," is stunning.

—GRACE D. AIKENHEAD,  
*Editor, "Business Briefs."*



## State Commission Control of Oil and Gas Wastage

A picture of the problems and difficulties  
confronting the prorationists of Oklahoma  
and other states

By JOHN M. OSKISON

SIXTEEN years ago, Oklahoma's legislature revised the original state law of 1909 concerning the prevention of waste of natural resources. Although the act covered such items as forest products, fish and game, and many minerals, it was directed primarily at oil and gas production. For its administration, an oil and gas department of the corporation commission was created.

That marked the beginning of a campaign of conservation, through state regulatory bodies, that has spread to various other states.

UNTIL 1926, there was little for this department of the Oklahoma commission to do; the question of overproduction had cropped out only spasmodically. Since then, however, the picture has so changed that, so far as the control of oil and gas production is concerned, the commission is facing a serious challenge of

its power. Within the last two years, a wonder field of oil and gas has been developed in the very streets of Oklahoma City which has taxed the resources of the conservationists and led to the legal testing of the constitutionality of the law of 1915, under which the commission's conservation officer functions.

An almost incredible situation confronts the Oklahoma oil and gas producers. A specific illustration will show it vividly:

In the month of December, 1930, for example, the maximum daily demand for crude oil from the state was some 535,000 barrels. It was the amount fixed upon by a nation-wide agreement of operators as fair to Oklahoma and the other oil producing states. As a matter of fact, live wells within the state were capable of turning into pipe lines more than 5,500,000 barrels a day. In other words, only about one tenth of possible pro-

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duction could be marketed profitably.

The situation is growing more serious, as it has grown in potential seriousness since the opening of the great Seminole deep-well oil and gas field in 1926. Two years later, in December, 1928, the still deeper and richer field of Oklahoma City was discovered, and the possible output from it of oil and gas is so prodigious that the problem of waste prevention has become acute to the last degree.

One well within a half mile of the wholesale district of Oklahoma City went wild for three days last October; in that time, it wasted gas enough to supply all the needs of that metropolis of 185,000 people for eleven days! In the same period, the crude oil, of the very highest quality, that overflowed into the Canadian river from hastily prepared earth storage reservoirs amounted to about one eighth of the total amount that could be profitably marketed from all the state's 65,000 and more wells. And among the 640 producing wells whose 122-foot steel derricks resemble a strange, gigantic seven-by-two-miles orchard area overshadowing the southeastern section of the city are a number which are even bigger in potential oil and gas capacity!

**W**HEN, in 1926, daring operators in the Seminole field put down wells below 4,000 feet, they tapped stores of oil and gas far richer than any before reached in such rich older pools as the Glenn, Cushing, and Burbank. At peak production of 550,000 barrels a day, the Seminole output broke the price of crude oil a dollar a barrel—and the almost incalculable volume of gas that rose with the oil

had no appreciable value because of lack of market facilities.

Operators throughout the state became alarmed, of course, and out of their discussions, led by W. C. Teagle, president of Standard Oil of New Jersey, developed the idea that proration was essential. The experiment of putting details of curtailment under control of a state umpire was revived.

It was then that the oil and gas department of the state corporation commission came to life. Its head, consulting the laws of Oklahoma, found this specific enactment in the statute book:

Natural gas and crude oil shall not be produced in the state of Oklahoma in such manner and under such conditions as to constitute waste.

The law as to crude oil covered economic waste, underground waste, surface waste, and "waste incident to production in excess of transportation or marketing facilities." Wastage of gas was defined as escape into the air in commercial quantities, intentional drowning with water of a gas stratum capable of producing in commercial quantities, underground waste, burning of gas wells, and wasteful utilization of gas.

Another section of the law of 1915 provided for compulsory proration when oil and gas were being overproduced.

**A**RMED with such definite authority, the state oil and gas conservation officer called a meeting of operators throughout the state and urged upon them a proration agreement. He put the case for the corporation commission about this way:

"I have back of me this state law

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against oil and gas waste. Frankly, however, I have not the power to enforce it against your opposition; I have neither the funds nor the personnel to create and maintain an enforcement division. But I can help you work out a proration agreement and a machinery of inspection, then issue an order making it the official command of the state corporation commission; I can at least lend the *threat* of legal action against violators."

While the Oklahoma legislators, who have been notably experimental, freely asserted state control over natural resources, they have never dared to arouse the predominant farmer vote with appropriations adequate to enforce such a law, applying as it does to a limited though important industry like oil and gas production. Hence the necessity for the coöperative effort for control between the commission and the operators.

**B**EGUN in this way as a coöperative effort, the Oklahoma oil and gas conservation work has so continued. The corporation commission finds it useless to promulgate orders not based on the consensus of opinion and the desires of the great majority of producers. The supreme state authority, in practice, is not the state's conservation officer, but the umpire

selected by the oil and gas men. He decides disputed questions of output, because he is really instructed and paid by the members of the voluntary association of operators within the state, while holding official appointment by the corporation commission. His staff, also, working under regional associations of control, are supported by the operators while armed with authority from the commission.

**T**HE first tentative effort to conserve Oklahoma's oil and gas supply by proration was an order to cut the Seminole and nearby fields to 75 per cent of capacity. From that mild beginning of curtailment, restriction of oil production has progressed to the cutting down of output in the Oklahoma City field to but 2.78 per cent of capacity, measured on a time-flow basis! Gas wells have been limited legally to 25 per cent of capacity flow, but in practice the wells that are commercial producers are generally on about a 2-per-cent-of-capacity basis.

The figures suggest that the state is almost literally drowning in oil, and facing the problem of utilizing economically a nearly inconceivable supply of natural gas. Nor is Oklahoma alone in this predicament; at a recent hearing before the corporation commission at Oklahoma City a series of



**Q** "THE Oklahoma picture of conservation through the efforts of a state commission is the most interesting, as it is the most important, at this time. But its corporation commission's problems are also the problems, in varying degree, of similar commissions in Texas, California, Kansas, Pennsylvania, Kentucky, Michigan and nominally by Louisiana and Arkansas."

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findings on the whole oil and gas situation was issued as dicta preliminary to an order. Among them were these:

Potential production of oil in the United States was 10 million barrels a day, and about 300,000 barrels a day were being imported.

Maximum demand for domestic use and export was only 2,800,000 barrels a day.

Stocks on hand in the United States aggregated more than 685,000,000 barrels, adequate to supply the country's demands for over seven months.

**T**HE situation in Oklahoma has been indicated, but the following from the commission's findings may well be added:

"Potential production of the Oklahoma City pool has increased [October 28, 1930] to approximately 2,800,000 barrels per day and, by reason of the large number of wells drilling or awaiting production in said pool, such potential will probably increase to 3,319,000 barrels per day in November, and to 3,446,000 barrels per day in December."

In fact, the commission's estimate for December has proven to be ultra conservative, for the pool's actual capacity in that month rose to more than 5,000,000 barrels, measured by reported well gaugings. The Oklahoma City wells alone could now turn out almost twice the amount of oil required in the United States, and one and one half times the whole world demand.

In judicial terms, the corporation commission concluded that by reason of this great oversupply and threatened waste, curtailment of potential production in Oklahoma must be continued. Unless this is done, conservation measures now in effect in the

other oil producing states may be abandoned, thus causing overproduction elsewhere and demoralization, waste, and undue exhaustion.

"The commission finds that this petroleum situation constitutes a great state emergency."

That was putting it mildly!

**S**o drastic was the order following the commission's investigation that protests arose from some Oklahoma operators. One, which has developed into a fight in the Federal court against the commission's authority to order proration, came from an Oklahoma company owning a few wells, a pipe line and refinery equipment, and wanting cheaper oil in order to compete with the big refiners. Another protest was filed by a notorious promoter, with two producing wells in the Oklahoma City pool, whose stock and royalty-unit selling campaign was being hampered by the necessity for observing proration orders. Others, especially owners of leases in the Oklahoma City field, found themselves compelled to drill offset wells, at a cost of about \$150,000 each, in order to protect their underground supply. Many of them were small operators with limited capital, and they protested that the amount of oil they were allowed to produce would not pay current expenses and interest on borrowed funds. They charged that the proration order made by the commission was discriminatory to the strong companies.

The fight was carried through the Oklahoma jurisdictions; and the state's supreme court upheld the commission. Another case, submitted to

### How the Fight against the Commission's Orders Is Progressing in the Courts:

**"T**HE small operators charged that the proration order made by the commission was discriminatory to the strong companies. The fight was carried through the Oklahoma jurisdictions; and the state's supreme court upheld the commission. Another case, submitted to the Federal district court, is pending; and the first round . . . was won by the applicant. It is expected that the constitutionality of the law will be tested ultimately in the United States Supreme Court."



the Federal district court, is pending; and the first round (based on an operator's plea for permission to file an application to enjoin the commission from enforcing proration) was won by the applicant. It is expected that the constitutionality of the law will be tested ultimately in the United States Supreme Court.

**T**HE state's oil and gas conservation officer is uncertain of the legal foundation of his department, but quite positive as to its importance to the people. He continues to cooperate with the associated producers, and his last order made a sweeping reduction in output of thousands of wells not until then under proration—some 10,000 in fact, all that are making more than five barrels a day.

From these tiny producers up to the monsters which, in the Oklahoma City field, can gush 75,000 barrels of oil and 80,000,000 cubic feet of gas a day from the 6,500-foot-deep Wilcox sand, proration grows more and more

severe. While the Oklahoma City pool has a present potential capacity of more than five million barrels of oil a day, its actual outturn during a recent week was cut to 93,000 barrels daily. The increasing severity of proration in this field is shown by the quotas allowed in successive orders of the commission; at first, 50 per cent of potential capacity could be taken from the ground; then 25 per cent; then 18½ per cent; and finally, on the time-flow basis, 2.78 per cent.

At present, a new well, after the permitted flow of twenty-four hours (if tankage enough to hold the oil produced in that time is available, which is seldom), must be shut in for sixty-five days before beginning its pro rata production.

**N**OTHING is done, nothing practical can be done, in this marvelous Oklahoma City field toward conserving the prodigious volume of natural gas which rises with the gushing oil; except that there are in the field

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a few small-capacity plants for extracting gasoline from the gas, amounting to the traditional drop in the bucket. Running from each oil-gas separator, set beside the well, are four 5-inch iron pipes ending in elbow-risers to take the hissing flow of gas and shoot it high into the air. When a number of wells are thus flowing, the odor of gas creeps in at windows four miles from the field.

**T**HE Oklahoma picture of conservation through the efforts of a state commission is the most interesting, as it is the most important, at this time. But its corporation commission's problems are also the problems, in varying degree, of similar commissions in Texas, California, Kansas, Pennsylvania, Kentucky, Michigan, and nominally of Louisiana and Arkansas.

In California, the Lyons Gas Conservation Law of 1929 encouraging mutual agreements among operators to prevent waste, and to give such agreements legal sanction, roughly parallels the Oklahoma statute governing waste of natural gas; and it too has won its first round in the state courts. There in the Kettleman Hills field, abnormally rich in natural gas, the blowing into air of some 400 million cubic feet daily led to action against various companies.

The Texas State Railroad Commission has also recently acted to stop a prodigious outrush and wastage of gas, citing seven wells in the Big Lake region which, from the record depth of 8,500 feet, had in a brief period wasted 30,000,000,000 cubic feet of gas, equivalent in heating value to 5,000,000

barrels of oil worth \$5,000,000.

These three states of Oklahoma, Texas, and California illustrate the conservation problem, and action by their commissions indicate the trend of effort toward control which began as a voluntary movement and has been bolstered by laws of uncertain constitutionality passed when world demand exceeded world supply.

On the theory that an oil or gas producer is in reality a trustee administering a wasting asset in behalf of the population as a whole (Mark L. Requa's conception, when he undertook, as one of the country's most eminent oil and gas engineer experts, to lead the movement toward sensible proration), the states are attempting to take over from the Federal Government regulation of oil and gas output. The difficulties of the job are now apparent.

**L**IMITATION by proration, and by the compulsory shutting in of wells, is in for hard attacks.

Those who want the lid removed argue that if state commissions can limit oil and gas outflow they can also tell the farmers how much wheat and corn they may produce, and so on. It may be true, as the conservationists believe, that proration to the point where oil and gas are taken from the ground only as they can find profitable markets is in the interest of small producers equally with the strong companies, but the "little man" who is allowed to run less than 3 per cent of his oil and 25 per cent of his gas, and is facing financial breakers with millions of potential wealth shut in, is in the mood to fight all commission orders and upset the proration program.

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## As Seen from the Side-lines

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You can't tell how far a cat can jump by looking at it. Nor can you estimate, from the superficial observations, the extent of the recent Progressive political conference headed by Senator Norris and its possible influence upon the future history of this country.

\* \* \*  
POLITICAL conditions are disturbed and unsettled. It has been the history of American politics that business depressions and uncertainties have usually produced governmental and political upheavals. A sage observer of fifty years ago said, "When people get to thinking through their pocketbooks, watch out," and this philosophy has found ample verification the past few months.

\* \* \*  
THE November elections, which reduced the Republican control of Congress to nothing minus one, was not an isolated event. Look through the records of municipal elections and town meetings throughout the country and you will find evidences of a popular surge to retire the political ins and to put new men with new ideas into their places.

\* \* \*  
UP in old Vermont, where Republican politics has been as reliable as one of their 8-day vestibule clocks, the sturdy old folks threw out the Senator who had been designated by the conservative Republican governor and chose to succeed him a candidate who made a boast of his independence of the party machine and his willingness to experiment with some of the newer political philosophies.

\* \* \*  
AND when Vermont gets up on its hind legs and makes faces at conventions, what may we expect of that large tier of Western and Southern agricultural commonwealths where the sheriff

and the auction flag have been running a successful race against the Red Cross!

\* \* \*  
OUR opulent politicians and well-fed propagandists place too little credence in the collective common sense of the people. They see Norrises, Borahs, Shipsteads, Schalls, Cuttings, and Pinchots elected and other manifold examples of a national political disturbance and foolishly estimate them to be casual ripples on the surface without taking into account the ground swells these "ripples" forecast and precede.

\* \* \*  
You will find, I believe, that public sentiment of America is somewhat tired of both old political parties and is perfectly willing to elect public officials who may wear the party labels but who are known by the public to be insurgent, truculent, and in a mood to raise hell in general. In Germany, where they have about thirty political parties, it was quite easy to ascertain that the people there were going to retain those parties; that they were not going to lodge complete control in either or any of them.

\* \* \*  
GERMANY was saying, "We had one party before the war and see the mess that got us into," just as Americans have been saying to themselves during this economic crisis, "We had two parties here, and see the mess they got us into."

\* \* \*  
THIS Progressive political movement professes a determination not to attempt the formation of a new party; it asserts that it will penetrate both of the existing organizations and endeavor to "reform" them from within. That process is the most dangerous of all and its success will produce the turmoil which the American public wants and expects. If a third party were formed

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and decisively defeated, Progressivism would be delayed just as the defeat of Senator La Follette as a presidential candidate paved the way for the four-years' serenity of the Coolidge administration. But with the Progressive sharpshooting from within both parties and holding a balance of power enabling them to form the destiny of one or both parties, the outcomes of legislation can be as uncertain as their daily, shifting moods.

Mr. Norris' keynote speech to the Progressive conference was a caustic attack upon the evils within the public utilities, as he views them. That he accurately sounded the sentiment of the conventioners is not to be disputed by any sane and sensible person.

BUT beneath his forensic demonstration, there lies a deeper movement which will cause much more concern and trouble than the platform oratory of the day.

THESE Progressives delivered the most thoughtful and well-equipped discussions of the tariff when it was under debate; in fact, the Democratic outpourings were sophomoric and superficial as compared to the speeches of the younger La Follette on steel and sugar, Nye on lumber, and so on.

Now, the gentlemen of this group are preparing themselves for an assault upon the financial structures of the public utilities and what they please to term the "vested interests" and, with the tariff debates as an example, it can safely be assumed that they will be abundantly supplied with facts, figures, and argument according to their predilections.

THEIR theory is this: Prosperity was artificial; it was erected upon an insecure and dishonest base; that base was "watered stock," the investment trusts and holding corporations, interlocking directorates, capitalization of premi-

ums, and the distribution of profits in the form of stock dividends in order to escape the income and excess profits taxes.

THE theory continues as follows: Permanent and honest prosperity can never be realized and the business depression actually ended until the fictitious base is destroyed and a new and enduring one constructed.

IN short, they propose that "water" in all forms, whether it be through excessive capitalization at the outset or through management-expenses devices, shall be eliminated from the financial structures of the public utilities, including railroads, street railways, and lighting and power companies.

IN addition to their own facilities, government investigations are providing them with a resource of facts and arguments of which they otherwise would have been deprived. The Federal Trade investigation is only getting its second wind; moreover, the House Committee on Foreign and Interstate Commerce's study of holding companies supplied them with 1,742 pages of a report which possibly contains a stick of dynamite in every page.

ANYBODY silly enough to assume that the summer recess will be calm should dissipate that assumption now; for he will see a blossoming of a new movement for enforcement of the antitrust acts, the elimination of the guarantee under the Esch-Cummins Railroad Act, for regulation of holding corporations and for active restriction of the power companies, through the existing state laws and through new interstate legislation now being moulded. This cat is bound to do some jumping, and it has nine lives. Into whose fur its nails may clutch cannot be determined precisely.

*John T. Lambert*

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# What Others Think

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## The Traction Companies' Relations With the Press

WHICH of the public utility industries has made the most notable progress in the matter of public relations' publicity? Mr. Raymond S. Tompkins, vice president of the United Railways of Baltimore, writing in the *Electric Railway Journal*, says that it is the street railway company. But his assertion is neither boastful nor entirely complimentary, because he adds that it is probably because the railways had more to learn about publicity than the other utilities. He compares the former state of railway publicity relations to that of a Baltimore attorney of whom his opponent at the bar said to the presiding justice:

"Your Honor, Hercules, with his Archimedean lever, couldn't raise my esteemed brother to the level of a complete ignoramus!"

THE horse-car days of the gay nineties were pointed out by Mr. Tompkins as the period when railway publicity relations were at their lowest ebb. The railway executive despised the press because the press professed to despise him and his works. Here is Mr. Tompkins' description of the kind of treatment given to the horse-car business by the press of that era:

"An innocent merger between two or more competing companies was usually hailed by the press as a 'gigantic scheme,' with few probable benefits beyond the guaranteeing of 'liberal dividends' to the stockholders of the weaker companies. A runaway cable car was good for a thrilling column featuring the sickening speed, trees and houses flying by, tightly corseted ladies fainting all over the car floor. Strong reputations for fiendish cruelty were built up for the horse-car men by reporters who went out and counted the ribs of tired horses, and the sores on their backs, and interviewed passengers who had

to get out and help a horse by pushing a car up a hill. These stories usually began, 'Has the S.P.C.A. gone out of business, or is it because cruelty to animals is practiced by a rich corporation like the traction company that the society doesn't interfere?' Magistrates who let the drivers off when the S.P.C.A. brought the cases to court really were believed to be in the pay of the companies."

The early days of the electric trolley brought little improvement. Here is what Mr. Tompkins has to say about that:

"As horse cars disappeared and transit grew more rapid, cable and electric cars ran over a good many people. In the most natural manner in the world the public quickly assumed that the traction tyrants viewed these episodes with great relish. Standing heads like 'Rapid Transit Mishaps' were kept set up in the composing rooms, to be replaced on occasion with especially tasty headlines like 'A Life for a Penny,' when a little girl was killed while crossing a street because she stopped on the tracks to pick up a cent. All over the country there were fierce squabbles about fenders, and any company that delayed adopting fenders or 'cow-catchers' until they could find an efficient one was roundly denounced for preferring profits to protecting human life. When overhead electric lines went up, the appearance of gangs to plant the poles in the sidewalks was the signal for violent outbursts, appeals to the police, injunctions, and street fights."

A FEW railway officials bewildered by these savage onslaughts thought that they could ease the attack by slipping a few free passes to irate editors. Although this was not intended as a bribe, it might be, and, indeed, promptly was interpreted as hush money. Righteous editors could always get considerable pleasure and a spicy half column editorial out of the process of returning such passes with indignant and grandiose announce-

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ments that they could not be "bought" off in this manner.

The natural reaction to this treatment was sullenness on the part of the utility executives. They were business men, not diplomats. With no precedent to guide them, they hesitated to cultivate the press by taking up "publicity" as an art. They had been accused of such shenanigans too often to go around looking for trouble. And so the gulf between the railways and the public widened and stayed wide as late as 1912.

Although the need of press relations had by that time become sufficiently apparent for the American Railway Association to put itself on record as favoring publicity "to obtain the confidence of the public," here was the plaint of the luckless publicity man, Arthur Warren, of New York, who made a speech at the 1912 convention in Chicago. He said in part as follows:

"During the present week we have had continually to disappoint the representatives of the newspapers of this city and other cities and all news distributing agencies because it has been impossible to supply them with the material which they have legitimately expected to receive. At a 'Policy of Publicity' carried into effect in this manner they naturally wonder. . . . Am I to tell them that some of these documents—some of these reports and addresses—are not to be made public? In that case, they will inquire, 'What kind of policy of publicity is this, and of what are you afraid?' If you wish to sit in executive session, that is another matter, and your right to engage in it that way will not be disputed. But, then, why announce those themes and discussions publicly to anyone who takes the trouble to read your printed program?"

**M**R. TOMPKINS points with pride to the fact that railway publicity

has come so far since that time. He further rejoices that it has at all times and with trivial exceptions developed upon a plain open and honest "publicity" basis. He recalls the dangers of covered campaigns and publicity stunts to which some publicity men have stooped to promote other causes. He states his opinion that editors have been fooled so often by such fakes that they can now spot them a mile away and take great pleasure in literally sitting on such devious and subtle machinations. He says:

"The street railway industry as a whole has not been guilty of any such mistakes. It has learned its publicity lessons more slowly than most other businesses, but, in the main, it has learned sound stuff. Where any of its practitioners may fear to take open stands on traffic, taxation, fares, or any other problems, they know, at least, that there is no reward for taking the stand behind the back of some supposedly neutral and disinterested party, or they should know it. The American city today knows that its street railway men are honest business men doing work at least as necessary as the work of the letter carrier, and knows they have problems and more than half suspects what these problems are, and that there may be some soundness in the traction viewpoint. Today they can take street railway publicity without gagging, or yelling for the village beadle."

Unquestionably railway press relations have come a great way within the last two decades. News editors now welcome the railway press man because they know the sort of "stuff" he passes out is technically accurate, informative, interesting, and last, but not least, open and honest "publicity."

—F. X. W.

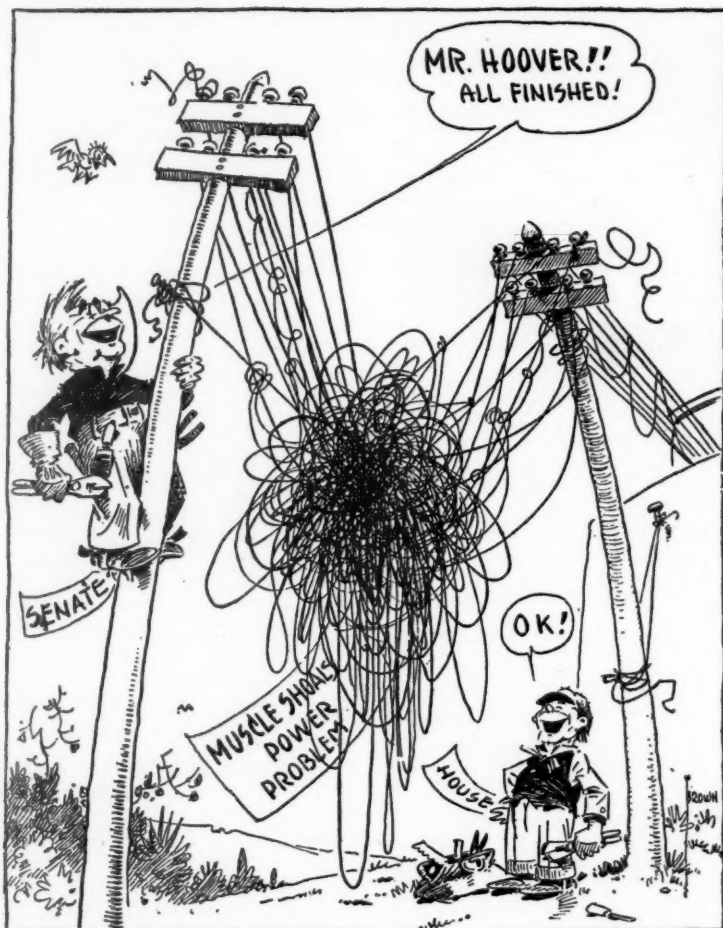
STREET RAILWAY PUBLICITY THEN AND NOW.  
By Raymond S. Tompkins. *Electric Railway Journal*. February, 1931.

## A New Utility Commission for Texas

**T**EXAS is one of the few remaining members of our family of states that fails to regulate all of the usual forms of utility service. So far, the jurisdiction of the Texas Railroad Com-

mission is confined to intrastate railway operations, with recently added limited jurisdiction over busses and pipe line carriers. There has been a persistent effort at Austin, however, to have cre-

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## THOSE EXPERT LINESMEN

ated a full powered Texas public utilities commission. It is understood that a bill to this end has been proposed which will be introduced at the forty-second legislature.

The Texas press, generally speaking, seems to favor the creation of the new commission. A dissenting note however, recently emanated from the editorial columns of *Southwestern Resources*, a periodical published by Edi-

tor Milton Everett of San Antonio. It says:

"The bill of the municipal politicians asks that a separate commission be created, with three commissioners each drawing a salary of \$10,000 per annum, a general counsel (lawyer) with a salary of \$10,000, a chief engineer at \$7,500, and a chief auditor, statistician, and an assistant auditor at \$6,000 a year each. There are eight new political jobs to draw an annual salary of \$65,000! Then there will be a horde of

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clerks, many thousands of dollars to be expended for office supplies and furniture, and a huge office rent bill, as the office building of the state is now full and many state offices are located in other office buildings. Besides there will be a large outlay for 'traveling expenses,' when these fellows are going around Texas fixing up their political schemes.

"Of course these seekers after creating more fat political jobs say, 'O! we will make the utilities pay the bill.' They alone will be robbed. Of course that is part of the plan. The bill provides that one fourth of one per cent of the gross earnings of all the utilities under regulation shall be paid to the state to support these new office holders. It is only the utilities' bull that is to be gored.

"But why do this unjust and unnecessary thing when the people of Texas in hundreds of places, and thousands of farmers on their farms, are asking for the extension of the utilities—those tools of business—so they can use them?

"Why persecute the utilities to raise money to give more jobs to politicians?

"We have already a railroad commission with all the facilities for regulating when

necessary the other utilities besides the railroads and the oil and gas pipe lines, which they have now under their control.

"The railroad commission is amply able to take care of any 'regulating' that the other utilities may need."

The editor does not appear to object so much to regulation as to the proposed high cost of it. He believed it could be adequately and more economically accomplished by increasing the powers of the existing regulatory body. That is the prevailing practice in other states. There is only one other state, New York, that has a separate commission for its utilities and for its railways, and that is merely for the purpose of taking care of the complicated transit situation entirely peculiar to the city of New York.

—F. X. W.

A VICIOUS PLAN OF UTILITY CONTROL. Editorial by Milton Everett. *Southwestern Resources*. February, 1931.

## Will the Railroad Consolidations Result in Economies of Operation?

**I**N a recent address before the National Association of Owners of Railroad and Public Utility Securities, Professor W. Z. Ripley of Harvard University pointed to some of the difficulties with which the railways are now confronted and restated his belief in the efficacy of planned consolidation as a source of strength to the roads.

With his summarization of present conditions there can be little disagreement. Although opinions differ as to the savings made possible through combination, recent developments—particularly the agreement upon a plan for the division of the lines in eastern trunk-line territory among four major systems (which Professor Ripley has approved in general outline)—make it probable that important consolidations will be effected in the not too far distant future.

Regulatory problems of the utmost

significance are involved in this situation.

Calling attention to the fact that the public rapidly lost interest in railroad consolidation after the publication of the Interstate Commerce Commission's tentative plan in 1921, Professor Ripley said:

"For a long time things went so well . . . that it seemed as if everybody had forgotten the issue. None of the presidents of the minor roads wanted to lose their jobs, and never were very keen about this business, so they were ready to join in the chorus, 'railroad consolidation is a dead issue.' Then, all of a sudden, like the plague of Egypt, there seems to have spread over the railroad land, not only a general depression, but attacks from every quarter upon this industry, which have in a way produced a desperate but not a hopeless situation."

**T**HE "plague" consists chiefly in the much-discussed inroads which have been made upon the traffic and

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revenues of the railways by such other carriers as waterways and motor vehicles. Professor Ripley disclaims a desire that the march of progress be retarded. "We have adopted here in American industry the policy of progression by a willingness always to scrap that which has become obsolete and relatively inefficient; and we surely cannot demand any other treatment for the carriers." But he is anxious that goods should move by the most economical agencies; hence he is alarmed by governmental competition and the subsidization of these competitors of the railroads.

Speaking of the Mississippi river barge lines, he says:

"Open that river to private enterprise, if you please, but the money of the taxpayers of the United States should not be devoted to such an experiment. It is unfair competition to which great popular investments should not be subjected."

Referring to the unregulated competition to which the railways are subject from motor vehicle common carriers, Professor Ripley mentions the great fleets of trucks which carry goods south from St. Louis and Kansas City, "taking tonnage which the railroads used to carry; and then—and this is the worst of it—loading there with the products of that region and bringing them back, regardless of the hire—merely loading them on there so that they may be brought back for almost nothing to the North by way of a return lading."

Again:

"A large part of the raisin crop in California, which used to come by the trans-continental carriers, is now being hauled to the coast on trucks in order to be shipped from there around to the east by water. There you have a combination of carriage by water and trucks taking the whole traffic for which the roads were created . . . while the carrier by highway takes the less than carload lots of high grade freight, the waterways are taking the bulky, slow-moving tonnage. The traffic is cut off at both ends."

The development of pipe lines, the loss of coal traffic by reason of indus-

trial changes, and increasing possibilities of long-distance power transmission and competition with airways for high grade traffic, both passenger and freight, are other reasons for concern over the outlook for the railways.

**T**o the economist the financial situation into which the railways may be plunged by subsidized competition is serious, but of at least equal importance is the fact that unless the "hidden costs" borne by the public at large are taken into account we shall continue in ignorance as to the carriers which should, in purely economic terms of comparative cost, carry most of our goods. Thus, Professor Ripley cites a hidden cost upon taxpayers of 6.62 mills per ton mile for barge operation on the Mississippi and Warrior rivers. Adding the 4.23 mills paid by shippers, the total cost per ton mile becomes 10.85 mills, "which is considerably higher than the rates charged by the rail carriers."

In increased taxation of motor vehicle common carriers and in the extension of effective regulation to them, Professor Ripley finds some reasons for optimism. "Only when there is some such regulation of the omnibus and trucking business, shall we have a balanced competition between the carriers by rail and the carriers by highway, and this may determine which is the better and on the doctrine of survival of the fittest, which ought to outlast the other."

**O**THER crises have been met successfully by the roads and Professor Ripley is confident of their ability to weather this one. Although he does not regard railroad consolidation as a general panacea, he does feel that it is incumbent upon the roads to make all possible efforts to effect savings. He expects that consolidation will contribute to this result in at least the following ways: first, through the shortening of routes, citing the proposed Baltimore and Ohio short line from New York to Chicago cutting the distance

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by about eighty miles, and the development of the Moffat tunnel; second, by promoting more direct routing, "in one suggested consolidation, by careful analysis it has been demonstrated that if the two properties were put together, one million car miles of circuitous and wasteful routing could per annum be eliminated"; third, "there will unquestionably be curtailment of employment in the course of such consolidations"; and, finally, something may result from store-door delivery and a closer coordination of various services, the implication being that consolidated systems would be in a better position to promote such developments.

"One cannot avoid the conclusion that railroads will yet emerge into renewed prosperity—a prosperity perhaps which shall as far exceed that of the past as the achievements of 1927-29 exceeded those of 1919-20." Even though one's view may not be quite so optimistic as Professor Ripley's, it can scarcely be denied that well-devised consolidations would be of material value.

WE may pass over the rôles which regulatory bodies may play in disclosing the public burdens involved in uneconomic and subsidized competition and their probable functions in extending control to carriers which are now free to compete as they will. It is clear that, if railway consolidation is to go forward as Professor Ripley hopes it will, the public must have adequate assurance that it will be the ultimate beneficiary. It is to regulatory agencies, state and Federal, that we may properly look for such assurance; they must deal with problems which are more or less directly related to railway consolidation.

The fear has already been expressed, as by Senator Brookhart at the time of the announcement of the four-party plan, that combinations would be dictated by Wall street and that the benefits would be exclusively in the form of bankers' commissions on the financing involved. So long as the law re-

stricts the par of securities of consolidated properties to their value for rate-making purposes, it is difficult to discover any rational basis for this fear, and proposed amendments intended to encourage combination have expressly stipulated that intangibles resulting from consolidations should not be capitalized. Perhaps the public should be reminded that present powers in this respect are adequate.

There is some feeling that service may suffer through consolidation, particularly because of the closing of gateways and through routes. Here again the present powers of the Interstate Commerce Commission are great. Not only may its service orders be useful, but already it has made its approval of specific combination proposals contingent upon agreements to maintain existing arrangements.

To the sophisticated shipper, however, assurances as to open gateways and through routes are not wholly satisfactory. He is familiar with the power of originating roads to control the flow of traffic in spite of nominally open gateways and the shipper's legal right to select his route. The public is, therefore, suspicious of investments by railways in their supposedly independent connections, and this is a feeling which is likely to increase, rather than diminish, with the creation of larger consolidated systems. Some state commissions possess powers in respect to ownership, but the Interstate Commerce Commission is uncertain of its ability under the Clayton and Transportation Acts to prevent railways from buying minority interests in others when the purchase may be defended as a "mere investment." A similar defense may be offered when the roads are connections rather than direct competitors. And the commission has definitely disclaimed jurisdiction when the purchase is negotiated through a noncarrier holding company. It was the holding company aspect of the matter which led to the investigation now being conducted by the House Committee on Interstate and Foreign Com-

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merce, but it is to be hoped that the legislation which is expected as a result will confer upon the commission powers with reference to all phases of the ownership question. Without such control the results of consolidation upon the public will be a matter of some uncertainty.

**A** LEADING argument against consolidation is the fear of labor displacement and it cannot be denied that the bulk of the immediate savings possible is in the form of reduced pay roll. The weight of this objection was felt in the opposition to the merger of the Great Northern and Northern Pacific and the passage of the Couzens Resolution by the Senate. Legislative safeguards for labor, such as that contained in the British Railways Act of 1921, are, of course, a possibility. Inflexible legislation, however, seems less desirable as a means of meeting this difficulty than informal understandings with management, such as that suggested by Mr. Willard, which would provide for a policy of lighter replacement and expansion of staff rather than one of discharge. Regulatory agencies may take an active part in the negotiation of such agreements. While the grant of security to labor now employed means some postponement of the realization of economies arising out of consolidation, this will serve as no bar at all to those savings, resulting from the elimination of capital duplications, which may yet prove themselves its most important long-run consequences.

It is unlikely that consolidations will be approved unless the commission is satisfied that the weak lines of a given territory have been provided for. Their inclusion within a strong system may save many short lines, and this is likely to win the support of the public served by such lines. But the carrying of unprofitable branches may well offset the economies resulting from the consolidation of the major components of a system. If the maximum of economy is to be secured, it may turn out that petitions for abandonment have only

been postponed. In such cases the commissions will, of course, be confronted by a highly developed public sentiment in favor of the continuation of rail service at all costs. But the competition of other carriers—so emphasized by Professor Ripley as a cause of railway difficulties, and thus as a reason for railway consolidation—often indicates also a reduced need for rail facilities.

**A**RGUMENT for railway consolidation in the public interest ordinarily stresses the desirability and possibility of a closer coordination of transport agencies. Some would have the railroads develop transoceanic and inland water lines, motor vehicle services, and air transport, all nicely dovetailed with railway operation. Others fear a transportation monopoly and the deadening effect of railway domination upon these other carriers. Indeed, bills have been introduced into Congress which would extend to motor vehicle operation by railways even broader restrictions than those now imposed in respect to their ownership of competitive water lines. It is likely that the resources of consolidated systems would permit greater developments along the lines of coordinated transportation. If this is the result it is certain that regulatory bodies will find their functions considerably expanded. With or without their combination under a single operating ownership, there may now be reason for as extensive public regulation of bus lines as of railways; but the taking over of one by the other will serve as the clinching argument in the public mind.

Whatever may be the outcome of the consolidation question, many of the economies which unification would produce are possible, at least to a degree, under separate ownership and operation through more cooperation than that now generally obtaining. Particularly is this true in the cases of port development, terminal operation, and the needless duplication of train schedules. In a few isolated instances the

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Interstate Commerce Commission has sanctioned pooling and joint passenger train operation. Although savings have been reported, this principle has not been greatly extended. The reason is apparently a public desire for at least the semblance of competition.

It would seem that the commissions could engage in no more worth while activity than that of encouraging co-operation in the interests of economy,

whether they wish to demonstrate the possibilities of consolidation or to reduce the need for it.

—NELSON LEE SMITH,  
*Professor of Economics,*  
*Dartmouth College.*

PROBLEMS OF RAILROAD CONSOLIDATION. By W. Z. Ripley. An address before the New York Problem Discussion Group of the National Association of Owners of Railroad and Public Utility Securities; December 18, 1930.

### The Political, Journalistic, and Legal Aspects of the "Power Trust"

OVER a nation-wide hook-up, Martin J. Insull, president of the Middle West Utilities Company and one of the progressive leaders of the electric industry, broadcast his own opinion of the "power trust," over the radio. He called the "power trust" a myth and accused those politicians who are continually mouthing the phrase of erecting a bugaboo to scare the people into voting for them. He pointed out that the word "power" refers presumably to the electric light and power industry, and the word "trust" "to an illegal form of business organization designed to restrain trade by reducing output, or raising prices, or both."

Conceding the identification of the word "power," Mr. Insull proceeded to show that the electric industry had not only increased its output with every year for the last ten years, but had generally reduced rates during the same period. He said:

"When you think back ten years, you realize how much more you are doing electrically about the house than you did then, at a comparatively small increase in your monthly bill.

"There are about twenty and one-half million other household customers who, like you, do more or less of the household drudgery by electricity. They pay their electric company on the average 8½ cents a day. Just think of it—8½ cents per day! And all this fuss about the 'power trust'! About ten million of these customers pay an average of 5 cents a day—the price of

a package of chewing gum. The other ten million pay an average of 12 cents a day—less than the price of a package of your favorite cigarettes.

"Just for the fun of it, when you get your next monthly bill from the electric company, divide the amount of the net bill by the number of days the bill covers, and find out what electricity costs you per day. See whether you are above or below the national average of 8½ cents."

Mr. Insull next touched upon the obligations imposed upon electric companies to render adequate service at reasonable rates by the existing regulatory agencies. He said:

"Indeed, electric light and power companies cannot reduce output or raise rates because, like railroads, they are compelled by law to serve all who seek service, and their service and the rates that they charge are determined by government—preferably, as in most states, by a public service commission. They are completely regulated, and it is hardly necessary for me to point out to you that no regulated industry can be a trust. The two things cannot exist together in the electric light and power industry, since you are always free to lodge complaints with your state regulating commission as to either service or rates."

MR. INSULL reminded his listeners of the difference between monopolies and trusts. He said that it was necessary for a utility to have a monopoly in a given service area in order to serve without wasteful duplication, such as existed in the old days when citizens of some communities had

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to have two telephones on their desk. That is quite different from a single sinister nationally organized agency engaged in a conspiracy to exploit the people.

That the American system of regulating electric companies as guarded monopolies has been successful is proven, said Mr. Insull, of the present excellent condition of the industry. He said:

"The success of the American plan of running the electric light and power industry is attested by the fact that the growth of the industry has been such that Americans, who number about one seven-tenth of the world's inhabitants, use about one half of the world's output of electricity. Every foreign commission that has come here to find the reason for America's industrial supremacy has included in its report that an important explanation is 'cheap electric power, anywhere and everywhere.'"

Mr. Insull then pointed out that the motive behind the movement to arouse ill will in the minds of the average citizen against the electric industry by calling it a "power trust" is the program of government ownership and operation of utilities, which is only the entering wedge of an ultimate program for complete state socialism. In addition to the small group of socialistic agitators, the movement was said to be backed by certain politicians and newspapers who insist on saving the people whether they want to be saved or not. He concluded:

"When one considers that the expenditure of \$800,000,000 means steady employment at good wages for 400,000 men throughout 1931, these assaults on the electric power industry are in reckless disregard of immediate public welfare."

**P**ROBABLY the most spectacular reaction to this broadcast by Mr. Insull was an address given on February 15th from the steps of the House Office Building by Representative La Guardia, of New York. Mr. La Guardia chose this public rostrum "in order to waive congressional immunity" for any of the statements he might make, for which Mr. Insull might care to sue for slander.

There was, however, nothing in the fiery little New Yorker's speech that would strike the average lawyer as "actionable *per se*." The gist of his statement was as follows:

"Mr. Insull, while pretending to be speaking in the interest of the public, was really plugging for the sale of stock. His speech was made on time paid for by a firm of stock brokers. Had Mr. Insull's speech been given to any newspapermen under the same circumstances and the same auspices, it would have had to have been labeled 'advertisement' on the top and at the bottom of each column.

"Mr. Insull made statements the other evening on the radio, under the protection of distance, which he would not dare and could not make while looking any consumer of current in the face.

"He made willful mis-statements of facts, painting a rosy picture of public utility success which was followed by a sales talk of the stockbrokers' firm on whose time he was speaking, and Mr. Insull talks of others misleading the public.

"Mr. Insull says that the power trust is a myth. I reiterate that the power trust is something real, existing, and vicious. It is known that a large sum of money was raised, of which Mr. Insull must have had knowledge, to conduct a lobby in Washington.

"This fund was contributed for three purposes: 1. To defeat Senate resolution 83 to investigate this power trust; 2, to defeat Muscle Shoals; 3, to defeat the Boulder Dam project."

The Washington (D. C.) *Evening Star* even discussed the open air speech with some amusement. It said in its editorial page:

"If this resort to the outer walls of Congress, the wide open spaces of the Capitol plaza, by the New York Representative should set the fashion, perhaps the time of Congress would be conserved, and opportunity for actual legislation would be increased. There are possibilities in the case. Suppose every surcharged congressional spirit were to relieve itself out in the open? What an easing of pressure on the columns of the *Record*! Or perhaps there might be a supplement to the *Record*—an extramural journal, printed without 'privilege,' its contributors liable for their own remarks."

—J. T. C.

THE "POWER TRUST." A radio address delivered by Martin J. Insull over a nationwide hook-up, February 11, 1931.

# WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

## QUESTION

*Have there been any decisions, as to what extent, if at all, expenditures by utilities for purposes of employees' pensions may be charged to operating expenses?*

## ANSWER

From the meager reported decisions available it appears that expenditures by utilities for purposes of pensions and relief of employees are properly included in a public utility's operating expenses. Seven decisions sustain this conclusion and apparently there is no contrary authority. There is a further conclusion sustained by three of the decisions that the manner and method for setting up pension systems is to be left to the discretion of a utility's management and will not be disturbed in the absence of evidence of unreasonableness.

One older decision (*Re Milwaukee Electric R. & Light Co.*) suggests that the Wisconsin commission is in favor of a scientific pension system rather than a mere charge of current actual expenditures to current operating expenses. A digest of the seven decisions follows:

In *Milwaukee Electric R. & Light Co. v. Milwaukee (Wis.)* P.U.R.1918E, 1, on page 45 the commission states:

"In the audit report, the provision for the year 1916 for relief and pension was adjusted to equal the actual expenditures for relief and pension association work, plus the amounts actually spent for pensions. It appears to us that provision made on such a basis as this is likely to be inadequate as time goes on, although it is next to impossible to measure the requirements with any degree of exactness. The amount required for pensions is so closely involved with the question of wage rates and recession rates that we have no means of determining precisely what the provision

should be. However, we believe that it would probably be unfair to the companies to adjust this provision so that less than \$10,000 per year would be provided for actual pensions, and the audit adjustment will be modified accordingly."

No reviewable error is committed by the master in refusing to permit cross-examination of company officials as to the reasonableness of a provision for sickness and superannuation of employees, although the discretion of the officers upon this question is open to review, where the only available proof as to unreasonableness would have been by showing that other companies made smaller allowances, and no offer of such proof was made. *Consolidated Gas Co. v. Newton*, 267 Fed. 231, P.U.R.1920F, 483.

Sickness and pension provisions are a proper charge against operating expenses of a public utility; and the method to be adopted in making such provision is fairly open to the discretion of the officers of the company. *Consolidated Gas Co. v. Newton*, 267 Fed. 231, P.U.R.1920F, 483.

The method to be adopted in making a provision for sickness and pension plans is fairly open to the discretion of the officers of a utility company, in the opinion of a Federal district court, which also held that no reversible error resulted from a refusal to permit cross-examination of company officials as to the reasonableness of a provision for sickness and superannuation of employees, although the discretion of the officers upon this question was open to review, where the only available proof as to unreasonableness would have been by showing that other companies made smaller allowances and no offer of such proof was made. *Consolidated Gas Co. v. Newton*, 267 Fed. 231, P.U.R.1920F, 483.

An annual allowance for a special fund for pensions was authorized as an expense of operation, to be handled in the same manner as a depreciation fund. *Re Mutual Teleph. Co. (Hawaii)* P.U.R.1921B, 209.

The estimated actuarial cost of a pension system for employees should not be allowed

## PUBLIC UTILITIES FORTNIGHTLY

as an operating expense when the pension system has not been put in effect, since the utility company should first establish the system and then justify its cost as a part of operating expenses. *Re San Joaquin Light & P. Corp. (Cal.) P.U.R.1922D, 595.*

Rules of procedure for recording expenditures for the relief work of a public utility company and its pension transactions were prescribed by the Wisconsin commission. *Re Milwaukee Electric R. & Light Co. (Wis.) P.U.R.1923B, 20.*

A plan for a relief department and pension system works to the advantage of a telephone company and the company's subscribers. *Re New York Teleph. Co. (N. Y.) P.U.R.1923B, 545.*

In a recent decision of the Pennsylvania commission, *Erie v. Mutual Teleph. Co.* (as yet unpublished), it appeared that the utility had established a pension trust fund in February, 1929, and wanted to amortize the amount of its original appropriation against annual operating expenses over a period of five years. The city objected on the ground that the appropriation should have been charged against corporate surplus. The commission stated:

"The current expenses incurred by reason of pension fund provisions adopted by a utility as well as the method adopted in making such provision are matters of discretion for the officers of the company, but in recognizing the estimated past accrual cost, the utility itself should bear the costs which it has not formerly recognized and provided for. Consequently future operation cannot be made to bear the past accrual costs of a pension system which the company now finds imperative and for which no provision was made during the period covered by the accrual."

So it seems that while the expense of a pension fund is chargeable to operating expenses, a utility can only charge against the ratepayers of a particular year expense of pension liability accruing during that year. It will not be permitted to charge a present generation of ratepayers for pensions to be paid employees who have spent their useful years in serving a former generation of ratepayers at a time when the company had not provided for any pension system.



### QUESTION

*Do the commissions require that revenues derived from the sale of merchandise by utility companies be included in operating revenues in con-*

*sidering the reasonableness of a utility's return?*

### ANSWER

Occasionally where the amounts concerned are not large, commissions require utilities to include revenues from the sale of merchandise for the convenience in utility accounting. This was done in *Re Consumers Co. (Idaho) P.U.R.1923A, 418*; *Rock Port v. Clifton (Mo.) P.U.R.1927E, 470*; *Polson v. Public Utilities Consol. Corp. (Mont.) P.U.R.1929E, 557*. That this procedure is followed for convenience rather than upon legal principles can best be shown by the language of the Montana commission in the Polson Case cited above. It says:

"The profit on merchandise has no part in determining the reasonableness of rates for a utility product. However, in this case, there is no way of ascertaining from the record what amount of expenses incident to the operations of the merchandise sales department were charged to utility operating expenses, so the reported profit on merchandise will be treated as an operating revenue."

The general rule, however, as suggested by the Montana commission, is to exclude merchandising profits from utility profits. They have been so excluded in *Re Holland Gas Works (Mich.) P.U.R.1925D, 571*; *Re Eastern Montana Light & P. Co. (N. D.) P.U.R.1920F, 928*; *Erie v. Public Service Commission (Pa. Sup. Ct.) P.U.R.1924D, 89*; *Casaneve v. Overbrook Steam Heat Co. (Pa.) P.U.R.1926A, 600*; *Georgia R. & Power Co. v. Georgia R. Commission (U. S. Dist. Ct.) P.U.R.1925A, 546, 589*; *Idaho Power Co. v. Thompson (U. S. Dist. Ct.) P.U.R.1927D, 388*; *Re Wisconsin Pub. Utility Co. (Wis.) P.U.R.1930A, 119*.

Both the state commission and the Federal district courts in New York appear to dissent from this general rule by requiring merchandising revenues to be included in operating revenue. It was so held in *Hermann v. Newtown Gas Co. (N. Y.) P.U.R.1916D, 825*; *Re Elmira Water, Light & R. Co. (N. Y.) P.U.R.1922D, 231*; *Kings County Lighting Co. v. Prendergast (U. S. Dist. Ct.) P.U.R.1925C, 705*.

In this connection it may be of interest to cite the classification of accounts proposed by a committee of the American Gas Association under date of November 1, 1919, in which classification the net revenue from merchandise is treated as operating revenue. In the classification adopted by the National Association of Railroad and Utilities Commissioners, although profit for merchandising was included with operating revenues, an exception was made in those cases where merchandising transactions were carried on by separately organized departments in such a manner that total cost is charged against sales.

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# The March of Events

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## Alabama

### Ban Is Asked on Disconnection and Reconnection Fees

A BILL has been introduced in the Alabama legislature to prohibit the collection of fees on delinquent accounts such as disconnection fees and reconnection fees. The measure would make a utility levying such charges liable to prosecution for a misdemeanor.

These charges have been extensively used by the various companies throughout the country. Commissioner Fitzhugh Lee explained that they dated back to the World War era when the Postmaster General, then exercising jurisdiction over telephone companies, permitted them to levy such charges.

The general rules of the Alabama com-

mission permit telephone companies, in the event of the nonpayment of any sum due for service, to suspend service and remove equipment after notice of intention to suspend. The subscriber is given the opportunity of paying his bill at any time prior to the actual suspension; but, in that event, a fee of \$1 is collected to cover, in part, the cost of the suspension.

Another rule of the commission permits discontinuance of electric service to subscribers upon notice, and a fee is added if an employee is dispatched to discontinue service but the account is paid without actual discontinuance. Where service is actually disconnected and restoration is desired, an electric company is allowed to add a \$1.50 fee for reconnection. Similar rules apply to gas and water utilities.



## California

### Favoritism and Merchandise Sales Are under Scrutiny

REPORTS of favoritism shown certain patrons of the Los Angeles department of water and power, according to the *Los Angeles Times*, have resulted in a resolution being adopted by the board of water and power commissioners calling for an investigation and report of the asserted practice.

The general manager has also been instructed by the board to report on the scope of the business that has been carried on in the buying and selling of electrical appliances. A salesroom is maintained in the department building in which thousands of dollars of electrical appliances of all kinds are sold annually. To quote from the *Los Angeles Times*:

"According to a resolution adopted the board wants to know who authorized the opening of such business, how much the business amounts to a year and the profits, who get them, who keeps the books and the annual cost to the department.

"Burdett Moody, referred to in the resolution, was business agent for the bureau of power and light until removed recently by the board for asserted participation in the

removal and destruction of valuable records from the department building during the last water bond campaign."

### Toll Charges in San Diego Are under Fire

SAN DIEGO councilmen have started an attack upon the present system of charging tolls for telephone calls between San Diego and La Jolla, Ocean Beach, and Mission Beach. The Southern California Telephone Company has replied that if these tolls are abolished the general level of rates would have to be increased and that the toll system is the most equitable.

To enforce its demands the councilmen have threatened to force the company to put all its wires under ground at great expense; to compel it to comply with provisions of an old franchise under which one of the companies taken over by the present concern agreed to furnish the city twenty-five free telephones until 1934; and to sue the company for the value of any such telephone service not received by the city in the past.

The council on February 24th voted to

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submit to the people on April 7th the question of eliminating telephone toll charges on calls within the city limits. Some question has been raised as to the authority of the city to act upon these rate matters in view of the jurisdiction of the state public utilities commission.

The position of the company, as stated by General Manager King, is that it should furnish service at the lowest cost consistent with financial safety. It is pointed out that with the great expansion of telephone service, the subscribers are getting more for their money than they did formerly. Today a subscriber can talk to or be called from 40,621 telephones in San Diego exchange as compared with 17,898 in 1920. In La Jolla the service has grown more than 300 per cent in the same period and in Pacific Beach the

service has been expanded more than 400 per cent.

As another indication of the reasonableness of the telephone rates Mr. King stated that 60 per cent of every dollar taken in was paid to local people in salaries and wages. The primary condition which has stimulated the extension of telephone service in this country, he said, has been the classification of telephone service into exchange and toll service. The purpose of such a classification is to enable the customer to get the service without making him pay for more than he needs or have use for at the time.

Other demands of the councilmen are that the company reduce residential service from \$2.75 to \$1 per month and that business rates be reduced from \$4.75 to \$2 per month.



## Connecticut

### Hearing on Utility Bills

At a hearing before the judiciary committee on March 2nd appeared friends and foes of the various bills introduced in the legislature to give the public utilities commission more power. Professor Clyde Olin Fisher of Wesleyan University, Professor Richard Smith and Professor Winthrop Daniels, both of Yale, were among the supporters of the legislation. Among those who spoke in opposition were James E. Wheeler for the Southern New England Telephone Company, Joseph F. Berry for the Connecticut Company, and Andrew F. Gates for the insurance companies as an individual holder of stock.

One bill would give the commission power to initiate inquiries into rates and service. At present proceedings must be started by petitions in behalf of patrons. A second proposal requires the filing with the commission of all schedules, rates, and agreements. It calls for notice beforehand concerning such rates and schedules. There is a provision that the reports of the commission shall indicate rates in operation, changes in schedules, and the reasons for the decisions made by the commission.

The commission under the terms of another bill would have control over the amount of capital and borrowed funds of the public utilities. The commission now has some control when mergers are considered.



## District of Columbia

### Higher Fare Plea Follows Pupils' Rate

THE public utilities commission recently ordered 3-cent street car and bus fares for school children but, according to John H. Hanna, president of the Capital Traction Company, in a letter to the commission no provision was made for the loss occasioned. The commission had acted pursuant to a recent enactment by Congress.

Both the Washington Railway & Electric Company and the Capital Traction Company

on March 6th asked the commission on its own motion to provide the companies with additional funds to make up for the losses they expect to result from transporting school children at the reduced fare. The companies take the position that the order reducing the fares is illegal and unfair, but owing to the public sentiment behind it they will not protest it, says the *Washington Star*.

The commission on March 9th denied the request with the statement that definite fare proposals must be made, and, furthermore, that they should await results of operation under the pupils' fares.



## Idaho

## Legislators Act on Utility Bills

**A**NNOUNCEMENT is made in the *United States Daily* that the Idaho senate has adopted a joint resolution providing for a referendum on a constitutional amendment to permit taxation of municipal utilities.

A bill proposing to abolish the public utilities commission was defeated by the senate, and an appropriation bill providing for expenses of the commission during the next two years, which was held up pending disposi-

tion of the abolition bill, has been passed by the senate.

A bill which provides for the construction and operation of utilities by municipalities without resorting to bond issues, the costs to be paid from revenues, was passed by the house, which later voted to reconsider the measure. The validity of contracts made by municipalities to purchase utility property on the installment plan, with payments being made out of revenue, has been raised in court in several states.



## Kansas

## Legislature Approves Wider Control of Utilities

**T**HE legislature has passed a law giving the commission jurisdiction over public utility holding companies. Provision is made that no foreign holding company shall acquire control of a local public utility without first agreeing to submit to the public service commission in the matter of rates and other transactions affecting the local operating company. Management, engineering, and similar contracts are subjected to the approval of the commission.

The commission is given jurisdiction over holders of the voting capital stock of all utility companies under its jurisdiction to such extent as may be necessary to enable it to require the disclosure of the identity of owners of substantial interests of voting capital stock. One per cent or more is considered a substantial interest.

The commission is given access to accounts and records of affiliated interests, including access to accounts and records of joint or general expenses, any portion of which may be applicable to transactions. Affiliated interests, for the purpose of this provision, include corporations or persons owning or holding 10 per cent or more of voting capital stock; corporations and persons in any chain of successive ownership of 10 per centum or more; every corporation 10 per cent or more of whose voting capital stock of the utility, or by any person or corporation in any chain of successive ownership; every person who is an officer or director of such utility corporation, or any corporation in any chain of successive ownership of 10 per cent or more of voting capital stock; every corporation which has one or more officers or one or

more directors in common with the utility corporation; every corporation which the commission may determine as a matter of fact, after investigation and hearing, to be exercising any substantial influence over the policies and actions of such utility; and every person or corporation who or which the commission may determine is actually exercising such substantial influence over the policies and actions of the utility corporation in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship, or by action in concert so as to make them affiliated with the utility corporation within the meaning of the law.

No foreign holding company is permitted to acquire control of a local operating unit or public utility without entering into an agreement to keep the commission fully informed as to the transactions between a subsidiary, or local operating unit and the holding company, and to submit to the jurisdiction of the commission in so far as such transactions affect the rate or charge to be made by the subsidiary or local unit.

The law forbids any management, construction, engineering, or similar contract with any affiliated interests to be made effective unless it has been filed with the commission. The commission is given power to disapprove the contract.

In ascertaining the reasonableness of a rate, no charge for services rendered by a holding or affiliated company, or charge for material or commodity furnished or purchased from a holding or affiliated company, is to be given consideration unless there be a showing made by the utility affected by the rate or charge as to the actual cost to the holding or affiliated company furnishing such service and material or commodity.



## Louisiana

### High Gas Bills Explained

**G**AS consumers in Shreveport have complained that their bills during the months of December and January had greatly increased over former bills, and as a result Public Service Commissioner Harvey G. Fields has been holding conferences with city officials looking towards an investigation of rates and service in the city.

Commissioner Fields, at a meeting of the city council, advised that the employment of an expert to determine the problems of meter regularity, pressure, and heat units would facilitate the probe to be conducted, and he warned the councilmen that if the matter of a rate hearing comes up they should be thoroughly prepared with their case, as the utilities always have their side prepared with figures and expert testimony, and when a hearing is held it would be necessary for the city to present a similar array of figures and facts. He stated that in checking up complaints against increased bills in a number of cities he had made the following findings:

"First: There was a difference in temperature during the months of December and January, according to the United States weather reports, which would indicate that there should have been a slight increase in the amount of gas used as compared with December, 1929, and January, 1930, because while there was not as low a temperature reached, the average temperature based on time was lower, which accounts for a slight increase.

"Second: I find that in one or two instances there has been a decrease in pressure and in the volume, quantity, and quality of the gas.

"Third: That in several instances there has been an improper distribution in the number and strength of heat units.

"Fourth: In some instances a slight leakage in lines which is negligible, sometimes

in the lines of the property owner, after leaving the meter.

"In one instance the operator decreased the heat units and action would have been taken had this defect not been remedied.

"The pressure should be eight ounces in this field and we should have heat units of 1,000 to 1,150 and there should not be more than 5 per cent air in boosting, and it is advisable that the municipal officials of your city employ an expert to study every one of these phases of the gas question. You gentlemen, according to my observation of your activities, have tried to serve the public and the consumer, and you may have as low a rate as possible, but if you do not get the proper pressure and heat units your gas comes high at any price, and I suggest that you make a test to see whether your people are being served with the proper heat units.

"If you are not getting the proper pressure from the field and from the pipe line distributor, with too much air to boost the gas, and the heat units have been lowered to 800, then people in order to get proper heat will have to use 2,000 feet to where they should use 1,000 feet, and would be paying twice as much per 1,000 feet as they should pay. In one instance the municipal officers discovered that the heat unit was far below what it should be and they were preparing to call on our body to assist when the heat unit increased, and which case you will readily understand was one where there was a decrease in heat units from an extraneous and outside process, which is easily possible if one decides to reduce the same, and in view of this fact and the situation as it prevails I am going to suggest to each and every municipal officer in my district, where the municipality is able to do so, to have your pressure and heat units checked occasionally, and if any discrepancy is found I shall be glad to call for an investigation and to assist you in the matter."



## Massachusetts

### Utility's Surplus Criticised in Rate Proceedings

**N**EW BEDFORD petitioners for a reduction in rates presented their case to the commission at hearings beginning on March 10th. Emil Auger, counsel for the petitioners, stressed the prosperity and growth of the utility and asserted that the surplus had grown to "enormous proportions"; that it had grown from \$1,200,000 in 1925 to

more than \$2,500,000 at the present time.

A demand has been made that rates should be reduced so as to yield a dividend of not more than 6 per cent and eliminate any addition to surplus during the present and reduce operating expense items, especially salaries. A total cut of at least \$600,000, or one half of the net revenue, he asserted, should be made in order to bring the rates to a proper level.

Mr. Auger stressed the so-called Massachusetts rule of return based upon capital

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investment, stating that "there is no great question of the fact that in this state a rate

based on reproduction value less observed depreciation is unsound."



### Minnesota

#### Commission Reports to Legislature on Telephone Rates

THE commission has reported to the senate committee on telephone and telegraph, in response to a resolution, that telephone subscribers have been paying 20 per cent too much, according to newspaper reports. The report is signed by C. J. Laurisch, in charge of telephone affairs of the state railroad and warehouse commission. The St. Paul *Pioneer-Press* summarizes the report as follows:

"The Tri-State Telephone Company of St. Paul with 30 exchanges throughout the state, has received 15.37 per cent on its true valuation, when the Federal courts have fixed 7 per cent as a fair return.

"Preliminary surveys, made on a basis of 1928 operations, indicated that the legislature should appropriate funds for a revaluation of all group telephone company holdings in the state.

"Value of the Tri-State Company holdings

for telephone purposes is not more than \$14,372,901. Its net earnings of \$2,210,179 constitute 38 per cent of its gross earnings or the equivalent of 7 per cent on a valuation of \$31,573,990.

"On the found valuation of \$14,372,901 the company's earnings constitute 15.37 per cent."

The report stated that any legislative action for an investigation should require that the companies cooperate fully in furnishing maps, plans, drawings, plant inventories, and field surveys and in collecting other data. An appropriation of \$205,000, it was stated, should be made to enable the commission to carry on an investigation.

In response to the recommendations in this report, three bills were introduced on March 2nd in the senate. One appropriates \$200,000 for the cost of the probe. Another requires the company to furnish all information needed. A third requires the companies to secure permission of the commission before any extension or abandonment of line or property worth \$5,000 can be carried out.



### Nebraska

#### Merchandising Practices Are Attacked

THREE directors of the Metropolitan Utilities District, according to the Omaha *Bee-News*, appeared before a legislative committee to resist passage of a proposed bill which would prohibit merchandising activities by utility companies. City Commissioner Joseph Koutsky censured the utilities district and its directors for selling gas appliances.

He termed the sale of appliances by the district as unfair competition with independent merchants, and said it should be abandoned inasmuch as the merchants contribute, through taxes and payment for gas, to the upkeep of the city-owned utility. He declared that the district undersells independent dealers and does not make a profit on merchandising.

Commissioner Koutsky asserted that the

district had "got clear beyond control of the people." Continuing, the commissioner said:

"The district is able to undersell for several reasons, mainly because it can buy stoves in larger lots. Another thing, unskilled workers are hired at 50 cents an hour to install and hook up ranges and heating stoves. They do inferior work. That's the reason there are so many gas leaks in homes.

"The merchant hires a skilled pipefitter at \$1 to \$1.25 an hour to attach the stoves. Paying this price for labor—union labor—the merchant cannot compete."

The commissioner said that in his thirty years in business he learned that competition with a tax-free concern is impossible.

Directors of the district said that the district does not want to interfere with private business, but at the same time it is interested in selling articles which will increase the consumption of gas.



## New Jersey

### Submetering Controversy Goes to Supreme Court

A BRIEF has been filed in the Supreme Court of the United States by the Public Service Electric & Gas Company opposing review of the decision of the court of errors and appeals, which sustained the company in refusing service to an apartment owner furnishing electricity to tenants through submeters. This is the widely advertised case of *Sixty-Seven South Munn Inc. v. Board of Public Utility Commissioners of New Jersey*.

The company in its brief points out that the submetering business is utterly new in the state, and that the evidence shows that this was not the adoption of a business or practice existing in the state, but the initial effort at the introduction thereof.

The company had refused to furnish service to an apartment owner who had contracted with a submetering company for installation of submeters. The submetering company, under the contract, was to control the meters, bill the tenants, with whom it contracted directly, and share the profits with the apartment house owner. The utility was asked to furnish service through a central meter at the established rates, which it refused.

Complaint was made to the board of public utility commissioners, and the company entered a defense of its refusal by declaring that the whole purpose of the Public Utility Act is to protect the public, and that it would seem that a construction of the act which would bring about a frustration of the legis-

lative purpose, remove a large portion of the public now protected as to rates and service from the protection of the act, and diminish the scope and area of the board's jurisdiction and effectiveness, must be a wrong construction. The commission sustained the position of the utility and was itself upheld by the New Jersey courts.

### Promotional Rates Draw Fire

A PROPOSED revision of gas rates by the Atlantic City Gas Company has drawn criticism by those opposed to this type of rate schedule. One attorney charged that the schedule shifted the burden from the rich to the poor consumer, and he criticised Mayor Bacharach for favoring the rate proposals.

The mayor declared that it is "unfortunate that innocent people have been misled by those with ulterior motives rather than community welfare at heart." He said that these rates were effective in one hundred and forty-two cities, stating further:

"It is propaganda to say this schedule will put a burden upon the poor. These rates do not affect the poor who use gas for cooking purposes preparing three meals a day. But these rates will affect the casual user, people who live in apartments and go out for most of their meals, perhaps using gas only for cooking breakfast. . . . Of course, the large consumer gets the advantage of these rates. The object of the new schedule is to make it so attractive that gas will be used for cooking and heating appliances."



## New York

### Legislators Hear Arguments on Submetering Control

A JOINT hearing was held before the public service committees of the legislature on March 4th concerning a bill designed to place electrical submetering companies under regulation by the public service commission. Former Judge William L. Ransom represented the New York Edison Company and former Judge Clarence J. Shearn represented the Real Estate Board of New York. The New York *Herald-Tribune* says:

"The bill introduced by Senator Warren T. Thayer, chairman of the legislative commission that investigated the Public Service Commission Law last year, provides that no submetering company may charge more than

the rate authorized in the rate schedules of the electric company from which it obtains its current. It also requires every submetering company receiving a deposit on meters to pay interest at the legal rate. Meters used by the submetering company also would be subject to inspection and sealing by the public service commission.

"Mr. Ransom testified that the New York Edison Company was opposed to the bill because 'it would fasten on the city of New York the present rates for electrical energy and would prevent future rate reductions. The only advocates of the bill, he said, were landlords and submetering companies who are profiting from the resale of electricity and depriving the Edison Company of the diversification of business to which it is entitled.'"

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"Mr. Shearn contended that the New York Edison Company had itself encouraged submetering, persuading the builders of large buildings to resell current rather than install generation plants of their own. The Consolidated Gas Company controlling the New York Edison, Mr. Shearn said, is now actively engaged in encouraging the submetering of gas."

### Bills Are Introduced to Amend Service Commission Law

A SERIES of eight bills providing for amendments to the Public Service Commission Law were introduced in the legislature on March 12th. These measures follow in general recommendations made last year by a minority, composed of appointees of the governor, of the Knight commission which made a survey of the public service law and brought in about forty bills of a remedial nature, many of which were vetoed, while others failed of passage owing to the late date of their introduction. The New York Times states:

"In some of the measures introduced, provision is made to enable municipalities to take advantage of the state's water power development project when that becomes a going concern.

"In one bill, for instance, municipalities would be authorized to form public utility districts and, subject to referendum, to acquire or build distribution lines connecting with lines of transmission carrying electric current developed at the projected state plant on the St. Lawrence river.

"One of the more important bills would set up a new policy for rate making, affecting all public utility companies except railroads and street railroads, and provide for an appraisal of utility company property affected in all parts of the state. Under the terms of this bill, valuations on existing properties would be on the basis of what has been termed a modified 'cost' plan, while valuations of new properties would be on the basis of actual cost. The bill provides that the valuations 'are presumed to be made in accordance with the law of the land.'

"The initial valuations upon being con-

firmed by the public service commission would not be subject to change except as a result of depreciation.

"The bill contains provisions giving the public service commission power of regulation over utilities management, including payments to holding companies and payments for materials and supplies. It would give municipalities and consumers the right to appear and be heard in the establishment by the commission of initial valuations.

"Two other bills are presented as alternatives to the previously mentioned measure in the matter of valuations and rate making. One of these provides for rate making through contract. By the other the rate-making plan would be made applicable only to property acquired by public utility concerns after the passage of the measure.

"Another bill, to be pressed only in the event that none of the three other bills should pass, provides, both as to present and future properties of utility companies, that the rate of return shall be based only on the property of the company, less the amount of bonds and preferred stock of the utility outstanding.

"Additional control over holding companies is provided for in another bill of the series. It defines as an 'affiliated interest' any company holding 5 per cent of stock, instead of 10 per cent, as under the present law, and eliminates from the present statute a provision under which 'affiliated interests' must have had dealings with the parent concern, other than the mere holding of stock, for a period of more than two years before they can be made subject to regulation."

### Gas Heating Rates Are Termed Discriminatory

AN investigation has been ordered by the public service commission into charges by the town of Harrison that the Westchester Lighting Company is charging rates for heating gas which are discriminatory to small consumers. Chairman Milo R. Maltbie is quoted in the newspapers as saying that the hearing would set a precedent affecting the scale of rates for gas companies throughout the state.



## Ohio

### Gas Rate Is Called Confiscatory

THE Northwestern Ohio Natural Gas Company has filed a petition in Federal court to secure a permanent injunction restraining the city of Toledo from attempting

to enforce a rate ordinance for natural gas, which went into effect on March 4th. Utility officials declare that the city ordinance, which sets up a new rate of 50 cents a thousand cubic feet with a 75-cent minimum charge, would result in confiscation.

## PUBLIC UTILITIES FORTNIGHTLY

Counsel for the company has declared that operations have been carried on at a loss for some time, and for that reason the utility asked the city council to revise gas rates to encourage the use of fuel and insure a

fair return to the company on its investment. The charge is made that the council acted summarily in adopting a 50-cent flat rate ordinance as negotiations were under way for a revision of the rates.



## Pennsylvania

### Senate and House Committees Compete as Probers

A COMMITTEE of the senate has been investigating the public utility situation in Pennsylvania for several weeks, but early in March competition in investigating sprang up when the house of representatives appointed a similar committee to probe the public utility question.

W. D. B. Ainey, chairman of the public service commission, has offered his cooperation to both committees. Writing to Senator William H. Earnest, chairman of the senate probers, Mr. Ainey is reported as saying that "in view of my length of service and my position as chairman for nearly fifteen years I may be able to furnish you with information which will be of assistance."

Sensational charges have been made against the public utilities and the commission, with allegations of collusion and improper practices; but C. J. Hepburn, counsel for the senate committee, is quoted as saying that he was disappointed in the attitude of the governor, who had failed to "disclose a scrap of specific evidence." At one of the sessions a Scranton newspaper reporter was called to identify a newspaper clipping with reference to a statement by an ex-congressman that a Scranton banker had seen a letter from

a New York banking house stating that the public service commission had decided to allow an increase in rates of the Scranton-Spring Brook Company before the opinion was handed down.

A large crowd of irate men and women of the Wyoming valley descended upon Harrisburg to voice their protests against higher water rates before the house committee. They came to the capital in thirty busses. The Scranton-Spring Brook Water Service Company was the target of attack. An appeal, by both utility and customers, from a commission order relating to rates of this company is now before the superior court.

The senate committee has been investigating charges by the governor that certain companies had made excessive profits. One of the companies was the Hershey Electric Company which, it was declared, had netted 38.75 per cent on book value in 1929. The company is operated by the Hershey Chocolate Company under a "convenience" arrangement and is not purely a utility company. The Cresson Electric Company, it was charged, made 51.8 per cent profit on book value in 1929. The Edison Light & Power Company of York, it was charged, had made a profit of 34.18 per cent on book cost. This was one of the companies which the public service commission last year, on its own motion, proceeded to investigate.



## Texas

### Legislative Investigation of Utilities Is Advocated

SENATOR Parrish has offered a resolution calling for the appointment of a legislative committee to investigate the rates and practices of public utilities and their taxation. As reported in the *Houston Post Dispatch*:

"Parrish said citizens from all sections of Texas were protesting against rates of public utilities. He mentioned 'transportation, insurance, telephone and telegraph services, natural gas and electricity for domestic and

power purposes, and oil pipe lines.' He said it had been alleged the charges of such utilities were exorbitant.

"Other allegations in the resolution were that the companies were monopolistic and were not bearing their just burden of taxation.

"The investigating committee would be made up of three members of the house and two of the senate. The committee would be empowered to obtain the assistance of one or more assistant attorney generals and an auditor from the state auditor's office. It would be required to report within forty days after beginning its work."

## PUBLIC UTILITIES FORTNIGHTLY

### Legislature Studies Utility Bills

COMMITTEES of the state legislature have been holding hearings and giving their consideration to proposals for the regulation of public utilities by commission. One of the bills creates a commission with authority to fix rates for all parts of the state, including the cities. Another measure provides that the incorporated cities and towns shall fix their own rates and where the utility is dissatisfied, it may appeal to a state commission created by the bill. One proposal provides that incorporated cities and towns shall fix their own rates and the county commissioners shall fix rates for territory outside such towns. In disagreements the utility could appeal to the local district court.

Provision is made in the so-called Pope bill that no utility shall collect a service charge; that holding companies shall not lessen competition by ownership of stock in competing companies; that no exclusive utility franchise shall be granted in any city or county; that a utility company shall not own majority stock in any newspaper, or do business other than for its regular charter purpose; that a utility shall not deny restricted service protecting patrons against long-distance charges by impostors; and that patrons shall be allowed 8 per cent on deposits they

may make with the company for service.

Under the terms of the so-called Holbrook bill a public utility commission of three members, to be appointed by the governor and paid \$10,000 a year each, would be created and would have original jurisdiction in fixing rates for gas, electricity, water, street and interurban railways, oil pipe lines, gas pipe lines, power lines, and telegraph and telephone companies. No rate can be charged unless approved by the commission. A utility would be allowed to suspend an objectionable rate and put new schedules into effect by filing a bond to indemnify patrons if the higher rate is not sustained by the courts or the commission. It provides further, in the words of the *Dallas News*:

"They are given authority to adopt a sliding scale of rates, but forbidden to make discriminations. The machinery is set up for the commission to value properties and obtain basic data in rate making. Competing utilities cannot install plants without making an effort to purchase the utility there operating. All future franchises shall be indeterminate permits, subject to all regulatory effects. The bill levies a quarter of 1 per cent of the utilities' annual gross receipts to support the commission, estimated at \$500,000, but no tax is to be levied in excess of the actual expenses."



## West Virginia

### United Fuel Gas Case Goes Back to Commission

FOLLOWING a decision by the state supreme court on March 11th setting aside the recent rate order of the commission in the United Fuel Gas Company Case, the commission again faced the problem of fixing rates in the southern part of the state. The first question presented after the court's action was what rates should be in effect pending final disposition.

Harold A. Ritz, chief counsel for the gas company, contended that the so-called temporary rates fixed by the commission a year ago, under which consumers in Charleston were charged 30 cents for the first thousand cubic feet, were in effect. Charles Ritchie, city solicitor of Charleston, took the position that the rates in effect before proceedings were started became applicable. In Charleston this amounted to 20 cents

net per thousand feet of gas. The rate varied somewhat in the different communities. The rate recently allowed by the commission was 75 cents for the first thousand cubic feet. The schedule provided for 30 cents a thousand for the next 150,000 feet a month; 25 cents a thousand for the next 450,000; and 22½ cents a thousand for all over 601,100 cubic feet used monthly.

Salient points in the decision of the supreme court were that reproduction cost, although it must be considered should not be given dominant weight in a rate valuation; that the question whether going value should be allowed depends upon circumstances; that neither going value nor general overhead costs should be based on purely conventional percentages; and that if leaseholds have a market value, that value is entitled to consideration. Further, it was decided that a utility is not entitled to an arbitrary percentage of net return. What is a fair net return depends upon present-day conditions.



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# The Latest Utility Rulings

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## State-Wide Uniform Taxicab Fares At Last

THERE are a number of states that enacted laws authorizing their respective commissions to regulate taxicab carriers before Connecticut took a hand, but ever since the Nutmeg legislature passed such a law back in 1929, its commission has gone after the taxicab problem with hammer and tongs. First of all, it cleared away unnecessary duplication of service by a strict surveillance of certificate grants to new cab operators. Nearly two years of this treatment has had its effect and the field of taxicab operation in Connecticut has now been pruned to the point where intelligent rate fixing can be ordered and enforced with some hope of a successful outcome.

Now the Connecticut commission stands out as a pioneer in taxicab regulation, not only because it is the first to promulgate definitely taxicab rates, but because it has adopted a state-wide uniform theory in its rate fixing.

Whether this theory can be employed in other states than a state such as Connecticut is probably a debatable question. As the commission said itself in its recent order:

"The topography, particularly as to the grade of the streets, the density of the population, and the taxicab traveling habits of different communities have a bearing on reasonable taxicab rates for each separate community which may justify different rates for different communities."

Be that as it may, the recent order of this commission, handed down February 27, 1931, fixes the taxicab rate of

20 cents for the first third mile and 10 cents for each additional third mile in the cities of Bridgeport, New Haven, Hartford, and New London. A slight variation was made in the rate for Meriden and Waterbury, where the initial rate was moved up to 30 cents for the first half mile and 10 cents for each additional one-quarter mile.

This development should be of considerable aid to the traction and bus agencies in their fight to stay declining patronage. The commission in its opinion intimates quite frankly that the factor of protecting mass transportation agencies was given serious consideration in the formation of its new taxicab policy. It said:

"Taxicab operation is in the nature of special service, distinct from mass transportation by railroads, railways, and motor busses at naturally lower rates. Taxicab rates are ordinarily for the service of the vehicle and driver for a particular trip, while mass transportation rates are based upon a specific rate per passenger. Each form of transportation has its special field and ought to be reasonably protected in the legitimate performance of its service."

Transportation executives generally would do well to keep an eye on Connecticut traction and bus revenues. Now that some measure of protection has been secured for them from cut rate taxicab competition, we will perhaps be able to form some reasonable conclusion as to just how much the taxicab does cut into regular carrier revenues. *Re Meter Rates for Taxicab Service. (Conn.) Docket No. 5593.*



## A Water Rate Slash in St. Louis County

THE Missouri commission has ordered a cut in the rates of the St. Louis County Water Company as a

result of the complaint of the city of University City, alleging unreasonable charges. The order, which was effec-

## PUBLIC UTILITIES FORTNIGHTLY

tive March 15, 1931, reduces the gross revenues of the company by  $7\frac{1}{10}$  per cent. The reduction is to apply to all classes of water service except the "manufacturers' " classification. The commission found that the company's rate base as of September 30, 1930, was \$6,092,066, upon which it was receiving a net annual earning of \$542,414 or 8.9 per cent return on such rate base. The new rates are calculated to yield a return of approximately 7 per cent. The company made vigorous opposition to this 7 per cent restriction, pointing out that other utilities had been allowed  $7\frac{1}{2}$  per cent and on three occasions as much as 8 per cent. The commission replied to this argument in part as follows:

"Stated differently, a rate of return lower than has been allowed to other water companies by this commission, to wit, a rate of 7 per cent was fixed by this commission for this defendant, and rates designed to yield but 7 per cent upon the then fair value of the property were promulgated by this commission in the before mentioned cases, with the idea in mind that due to the increasingly rapid growth in the territory served and consequent in-

creases in net earnings, the defendant for certain short periods might earn more than 7 per cent before the rates could be reduced, it being manifestly impossible to determine the exact rate of return until the accounts are cast up for a representative period. By this method approximately the same result is attained as if a rate of return allowed to other water companies, say  $7\frac{1}{2}$  per cent, were allowed to this defendant, with rate reductions made which calculated upon anticipated increased earnings would reduce the return to  $7\frac{1}{2}$  per cent. We have no reason for changing our method."

The opinion also contained considerable discussion as to the relative merits of the sinking fund and straight-line methods respectively of computing depreciation. The commission felt that a continuation of the straight-line method was equitable where the surplus funds not required for replacement purposes would be invested by the utility in additions and extensions of its own properties thereby assuring an interest accrual necessarily equal to the rate of return earned by the company on its rate base as a whole. *University City v. St. Louis County Water Co. (Mo.) Case No. 6741.*



### The Right of a State to Compel Local Incorporation of Foreign Utilities Is Sustained

**H**AS a state any right to require a utility incorporated in another state to obtain a local charter as a condition to doing local business? This was the question raised by an appeal from a judgment of the supreme court of appeals of Virginia to the United States Supreme Court, affirming an order of the Virginia Corporation Commission denying a certificate of convenience and necessity to the Railway Express Agency, a Delaware corporation.

The Constitution of Virginia expressly forbids the doing of local utility business in that state by a foreign corporation. Acting on this provision, the Virginia commission denied the application of the express carrier for a certificate to engage in intrastate com-

merce until it should obtain a Virginia charter. The carrier in its appeal to the highest court raised two points: (1) that the commission's action was unconstitutional because it burdened interstate commerce, (2) that the commission's action denied to the carrier the equal protection of laws guaranteed by the Federal Constitution.

Mr. Justice Holmes, rendering the opinion of the Supreme Court in sustaining the state, held as follows:

1. The refusal of a state, through its corporation commission, to grant a foreign utility a certificate to do intrastate business unless the latter incorporates within the state, will be presumed to be constitutional, in the absence of substantial evidence that such action by the state would im-

## PUBLIC UTILITIES FORTNIGHTLY

pose a burden on interstate commerce.

2. A state constitutional provision, requiring foreign utilities to submit to local incorporation before doing intrastate business, does not offend the guarantee of equal protection afforded

by the Fourteenth Amendment as depriving such utilities the right of recourse to Federal courts on grounds of diversity of citizenship. *Railway Express Agency, Inc. v. Virginia* (U. S. Sup. Ct.) No. 55.



### The Railway Express Agency Is Permitted to Operate Its Own Motor Service

ON July 1, 1929, certain railroad operations between Delroy and Canton, Ohio, were discontinued. Since this railroad had always carried intrastate shipments of the Railway Express Agency, Incorporated, the latter found itself compelled to look around for substitute service. It finally decided to handle the shipments over its own motor bus lines which it accordingly established in that territory. Around November, 1929, however, the express agency probably became convinced that its status was not clearly in conformity with the laws of Ohio, and it asked the commission of that state for a certificate authorizing it to do what in fact it had already been doing during the previous three months. The commission on the recommendation of its attorney examiner, denied the application. Two main reasons were given: first, that the applicant had not shown that existing motor carrier service in that neighborhood was inadequate; secondly, that the applicant had on its own admission been violating the law by operating without a certificate and hence, under the well established rule,

was not a fit party to receive one.

This ruling was appealed by the carrier to the supreme court of the state, which has recently reversed the commission on both points. The court held that an express agency, carrying on its own motor system of distributing shipments in a territory after the discontinuance of rail service previously used by it, was not an unfit party to be granted a permit, where such operations had been in good faith. The court further ruled that the express carrier was entitled to a certificate in its own right and without regard to the service of existing motor carriers, in view of the fact that it would merely be continuing to carry on in a different form a business which it had carried on for many years. The court pointed out that it was not the express carrier's fault that the railroad service had been discontinued, and that it should not be compelled on account of that to turn over its shipping business in that territory to existing motor carriers. *Railway Express Agency, Inc. v. Ohio Public Utilities Commission* (Ohio Sup. Ct.) No. 22329, 174 N. E. 356.



### Double Service at Double Fares, or Cheaper Service at Uniform Speed—A Transportation Alternative

WHICH is the better transportation policy for the average large city—a low priced local railway service plus a higher priced and higher speed supplementary motor coach service, or a comparatively cheap and proportionately slow speed general coach or railway

service, hauling both local and long-haul passengers? This is the interesting question which the parties to the complaint now pending against the rates of the Pittsburgh Motor Coach Company asked the Pennsylvania commission to decide as a preliminary step

## PUBLIC UTILITIES FORTNIGHTLY

to a decision on the merits of the complaint itself.

The commission, in answering the question, first pointed out that it could not be called upon in this proceeding to determine whether or not increased service should be ordered for particular sections of Pittsburgh, or whether or not independent carriers ought to be allowed to enter the field. Such questions, the commission said, should be properly brought before it in a separate proceeding for that purpose, and not as part of a complaint against the rates of an existing authorized carrier. Moving on to the alternative policies proposed above, the commission observed that the municipal authorities of Pittsburgh had taken a definite stand in favor of a cheap local service, supplemented by a higher priced

and higher speed motor coach service.

The commission stated that aside from the fact that it had always consistently refused to oppose, in the absence of the most convincing adverse evidence, the position taken by municipal authorities in attempting to work out a solution of their own transportation problems, it felt that the position taken by the city of Pittsburgh appeared to be entirely wise and one best calculated to meet the requirements of the greatest number of the people to be served. Upon disposing of this preliminary inquiry, the commission ordered that the case should be set down for further hearing upon the merits of the complaint attacking the reasonableness of the carrier's rates. *Young v. Pittsburgh Motor Coach Co. (Pa.) Complaint Docket No. 7965.*



### Other Important Rulings

A WATER company was ordered to extend service to a little settlement of sixteen residences, situated less than three miles outside of the borough of Portage, by the Pennsylvania commission. The cost of the extension after deducting proffered contributions of labor, cash, and materials by the residents was estimated at \$2,400 and additional operating expense exclusive of depreciation was set at \$90 a year. In view of the fact that all of the residents would be assessed a minimum rate of \$12 a year, the extension was held not to be an unreasonable burden. *Cerwensky et al. v. Summit Water Supply Co. (Pa.) Complaint Docket No. 8242.*

The petition of the Worcester Gas Light Company for approval of the purchase of the properties of the West Boston Gas Company has been allowed by the Massachusetts department as not being contrary to public interest. The department's approval carries with it authority for the issuance by the Worcester Company of 15,000 shares of preferred stock of the par value of

\$100 a share, carrying a preferred dividend of 6 per cent per annum. Authority requested by the Worcester Company in the same petition to purchase the properties of the Dedham and Hyde Park Gas & Electric Company was refused in view of the fact that the latter company did not manufacture its own gas and ought to be left in a position where it could secure the most favorable terms from wholesale gas supply companies. *Re Worcester Gas Light Co. (Mass.) D. P. U. 3883.*

A PETITION for authority to construct and operate a central steam-heating plant in the city of North Tonawanda has been approved by the New York commission as being in accord with public convenience and necessity. Commissioner Burritt, rendering the opinion, pointed out that the proposed financial structure, which was not part of the petition, would have to be revised because of its failure to conform with the law. The advantages of central heating were listed by the petitioner as follows: (1) an absolutely de-

## PUBLIC UTILITIES FORTNIGHTLY

pendable and unvarying heating service throughout the entire season, without fire, coal, or ashes; (2) a material reduction in smoke nuisance, owing to reduction in the number of chimneys and better control of the one; (3) reduction of fire hazard by removal of basement fires from many buildings; (4) saving of wear and tear on city pavements by elimination of hundreds of coal truck deliveries; (5) reduced cost of city ash collections; (6) cleanliness, comfort, convenience, and safety. *Re Slade (N. Y.) Case No. 6538.*

The Alabama commission has decided that a private toll bridge company is a public utility under the laws of Alabama and as such is required to obtain the approval of the state commission before issuing or selling securities within the state. *Alabama Public Service Commission v. Coffeerville Bridge Co. (Ala.) Docket 6083.*

The decision of the Missouri Public Service Commission that it had no jurisdiction to award a certificate of convenience and necessity for the operation of motor busses within city limits or for operations which would form a part of a general transportation system, the majority of which served an incorporated municipality, has been twice sustained in court. The commission's opinion was handed down when it rejected an application of the St. Louis Public Service Company to extend motor bus service 2 miles beyond the city limits of St. Louis into St. Louis county. This opinion, handed down June 2, 1930, was an interpretation of the Missouri Motorbus Act of 1927, and was affirmed by the circuit court of Cole county. The utility again appealed and a recent decision of the supreme court of the state again sustained the commission's ruling. *State ex rel. St. Louis Public Service Co. v. Public Service Commission et al. (Mo. Sup. Ct.) No. 30698, 34 S. W. (2d) 486.*

The California commission, in authorizing a motor carrier of that state to issue \$5,500 worth of common stock to pay for taking over an individual carrier's business, ruled that ordinarily expenditures for attorney's fees in connection with applications of other carriers to extend operations into territory served should be charged to operating expenses and not capitalized through stock issuance. *Re California-Nevada Stages, Inc. (Cal.) Decision No. 23347, Application No. 17041.*

The Pennsylvania commission has refused to deny an application for a certificate authorizing common motor carrier service in Pittsburgh, which was otherwise warranted, where the only objection seemed to be a contractual agreement made by the applicant to another carrier to whom he sold his former business "not to engage in any similar business" thereafter. The commission stated that it was concerned only with the question of the public convenience and necessity for the proposed service and not with the contractual rights of private parties who had their remedy in the courts of law. *Re Gerlach (Pa.) File No. 400.46.*

As a result of the discontinuance of the railway service previously rendered in the city of Oneida by the New York State Railways, the New York commission has granted an application of a motor carrier, also previously rendering transportation service, to have stricken from his certificate a restriction as to doing a local passenger business in that community. The motor carrier was also granted an increased fare from 10 to 15 cents. The commission ruled that a clause in the consents granted in 1919 by the city of Oneida to the applicant, fixing a rate of 10 cents, did not preclude the commission from allowing the rate increase upon a finding by the Commission that it was reasonable and just. *Re Clark (N. Y.) Case No. 7398.*

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports*.

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# Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND  
RECOMMENDATIONS OF COURTS AND COMMISSIONS



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RE ANDERSON

WASHINGTON DEPARTMENT OF PUBLIC WORKS

Re J. L. Anderson

[Order M. V. 2757, Hearing No. 554.]

*Service — Substitution of bus for steamboat service — Inadequate earnings.*

Motor carrier transportation between certain points was authorized co-incident with permission for the discontinuance, during the winter months, of unprofitable passenger steamer service previously rendered.

[November 22, 1930.]

**A**PPPLICATION of a motor carrier for a certificate of convenience and necessity to operate, and of the operators of a passenger steamer service for authority to discontinue, service during the winter months; both applications granted.

By the DEPARTMENT: This matter came on regularly for hearing at Seattle, Washington, on the 30th day of September, 1930, pursuant to notice duly given, before Enoch W. Bagshaw, supervisor of transportation; E. J. Delbridge, reporter.

The parties were represented as follows: For applicant: Alpheus Byers, Attorney, Seattle; for protestants; Hylas E. Henry, Attorney, Seattle, for Bainbridge Island Community Club and Port Madison; Tracy E. Griffin, Attorney, Seattle, for Gilberton Commercial Club; Frank S. Bayley, Attorney, Seattle, for Agate Point Community Club; J. G. Wagner, Mayor, Brownsville, for Brownsville; G. K. Binnie, Secretary, Wing Point, for Wing Point; Alfred H. Henry, Ferncliffe, for Ferncliffe Improvement Club; W. C. Sanders, Manzanita, for Manzanita Club; R. P. Mulvaney, Illahee, and J. Speed Smith, Attorney, Seattle, for Illahee.

Witnesses were sworn and examined, evidence was introduced, and

P.U.R.1931B.—8.

the Department being fully advised in the premises, makes and enters the following findings of fact and order:

*Findings of Fact*

J. L. Anderson, holder of Certificate No. 406, authorizing motor vehicle passenger and express service over specified routes on Bainbridge Island, made application for an extension of said certificate so as to authorize him to furnish passenger service by motor vehicle between Port Madison, Manitou Beach, and Winslow, via the East Port Madison road. Four round trips daily except Sunday will be operated and connection will be made at Winslow with the boat for Seattle. It is proposed to operate the passenger (stage) service herein applied for during the months in which the passenger boat service of the Kitsap County Transportation Company is discontinued. At or about the same time the stage application was filed, the Kitsap County Transportation Company, of which J. L. Anderson

## WASHINGTON DEPARTMENT OF PUBLIC WORKS

is president, filed a new time schedule in which one boat route was omitted. The boat service omitted was commonly furnished by the Steamer "*Verona*" and was referred to in the record as the "*Verona*" route and will be so designated in these findings.

When this matter was set and notices forwarded, it was contemplated that the evidence would relate only to the convenience and necessity of the proposed bus service. No protests had been filed against the new time schedule of the boat company. At the hearing all of the parties, without objection or exception, elected to treat the matter as an application to discontinue the "*Verona*" route and substitute stage service and the Department will treat the application as amended to that effect.

The steamer operating on the "*Verona*" route furnishes service between Seattle and Port Madison, Agate Point, Seabold, Manzanita, Venice, Gilberton, and Illahee. These towns are populated in the main by Seattle people who have their summer homes there and live in Seattle in the winter. Port Madison and Agate Point are on the northern end of Bainbridge Island and the rest are on the west side of Bainbridge Island or across Port Orchard Bay in Kitsap county. From the record it appears that the "*Verona*" route has operated at a loss for many years. In 1927 the loss was \$3,599; in 1928, \$3,941; and in 1929, \$5,454. The record shows that the "*Verona*" route operated at a profit in 1929 only during the months of June, July, and August during which months it carried 31,000 passengers. During the remaining nine months the total passengers were

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slightly more than 10,000. The record also shows that during the winter months practically all the patronage is obtained on Saturdays and Sundays, and that a large percentage of the travel is to and from Port Madison. Port Madison will continue to receive boat service, morning and evening, on Saturdays and Sundays.

It cannot be denied that the proposed stage service will be less advantageous to some of the communities than the existing service of the "*Verona*" route. The roads on the island are unimproved and do not follow the shore. Some of the towns are as much as a mile from the main road and the people will have to walk that distance to the road to catch the bus. The fare by stage and ferry to Seattle will be higher than the present fare on the "*Verona*" and the traveling time slightly longer. Against these disadvantages must be set the fact that all these towns are essentially summer colonies, almost deserted in the winter except for occasional weekend parties; that the "*Verona*" route year after year has shown a large loss; that this loss results from the almost negligible traffic in the winter; that the entire operations of the Kitsap Company to Bainbridge Island have for the last three years shown an average annual profit of only \$1,300 on an investment of \$336,000; that the point-to-point steamer on Puget Sound has shown itself unable to compete with stages and private automobiles and has disappeared, save for isolated instances. These facts and the further fact that, in all probability, almost every family living on Bainbridge Island has an automobile with which its members can reach the

## RE ANDERSON

ferry, if the stage service is inconvenient, leads the Department to the conclusion that it would be unjust to prevent the discontinuance of the "*Verona*" route. The Department sees no reason to doubt the word of the company that it intends to restore steamer service during the summer months when patronage is sufficiently heavy to earn a profit.

In reaching its decision in this matter, the Department has not overlooked the contentions made by representatives of the communities that the revenues earned by the "*Verona*" were unjustly credited to other routes, that other boats were unjustly allowed to cut-in on business rightfully belonging to the "*Verona*," and that various charges made to the "*Verona*" route were too high. The Department does not regard these charges as substantial. Without doubt, revenues and expenses could be assigned on some different basis, but no scheme of distribution more just than that followed by the company was suggested.

The Department is of the opinion and finds that Kitsap County Transportation Company should be permitted to discontinue passenger service by steamboat on the "*Verona*" route.

The Department further finds that public convenience and necessity require the furnishing of passenger and express service by motor vehicle over the route proposed when passenger service by steamboat over the "*Verona*" route is discontinued.

On October 9, 1930, certain of the parties hereto made application for a rehearing on the following grounds: First, that there was prejudice and

bias on the part of the supervisor, Mr. Bagshaw; second, that evidence offered and questions propounded by protestants were erroneously excluded; third, that the death of Mr. Bagshaw removes from the board the only member personally present at the hearing. The Department sees no reason for a rehearing. The hearing consumed two full days and was reported by reporter employed by the Department. The members of the present board have carefully examined the statement of facts, consisting of more than 250 pages, and do not find any material question or evidence was excluded to the prejudice of protestants. The questions to which objections were sustained were in every case either immaterial or merely cumulative of testimony already in the record. The fact that no member of the present board personally heard the testimony is, of course, immaterial. The law contemplates that the board shall reach its decision from a consideration of the reported testimony and provides that any case may be heard by an examiner who is not a member of the board. An order will be entered denying the petition for rehearing.

## ORDER

Wherefore it is *ordered* that Kitsap County Transportation Company be permitted to discontinue passenger steamboat service on the so-called "*Verona*" route except during the period of four months beginning June 1st and ending September 30th of each year, during which period the company shall furnish substantially the same steamer service as hereto-

## WASHINGTON DEPARTMENT OF PUBLIC WORKS

fore and until further order of the Department.

It is *further ordered* that the application of J. L. Anderson herein be granted and Certificate No. 406, standing in his name, be amended to authorize passenger and express serv-

ice by motor vehicle between Port Madison, Manitou Beach, and Winslow, in addition to service now authorized.

It is *further ordered* that the petition for rehearing herein be denied.

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## OKLAHOMA CORPORATION COMMISSION

# Cherokee Public Service Company v. Southwestern Natural Gas Company

[Cause No. 10415, Order No. 5416.]

*Service — Duty to serve — Wholesale and retail natural gas utility.*

A wholesale natural gas pipe line carrier was compelled to extend service to a distributing utility, seeking its supply at the same rates and under the same terms as the former had already contracted to sell to another distributing utility operating in the same territory.

[January 7, 1931.]

**C**OMPLAINT of a distributing natural gas utility against the refusal of a wholesale natural gas pipe line carrier to render service to the former; complaint sustained.

By the COMMISSION: On this the 1st day of December, 1930, the above styled and numbered cause came on for hearing before this Commission. The complainant, the Cherokee Public Service Company, appeared by its duly qualified officers and attorney of record, and the Southwestern Natural Gas Company appeared by its duly qualified officers and its attorneys of record, and announced ready for hearing.

Thereupon, the Cherokee Public Service Company produced its testimony

showing the defendant, the Southwestern Natural Gas Company, had constructed a transporting gas pipe line from the Quinton field in Pittsburg county, Oklahoma, to Tulsa and Sand Springs in Tulsa county, Oklahoma, and running through Muskogee, McIntosh, and Creek counties, and that it had announced its intention of serving the public generally by selling gas wholesale at Muskogee, Oklahoma, in addition to other places so stated in its pronouncement; that it had contracted for sale of gas and

CHEROKEE PUB. SERV. CO. v. SOUTHWESTERN NAT. GAS CO.

was selling gas to one distributing company at Muskogee, Oklahoma, and had a connection at, or near, the city limits of said city of Muskogee, Oklahoma, where its said gas line could be connected with for furnishing gas to the plaintiff herein, the Cherokee Public Service Company, a corporation. That the said Southwestern Natural Gas Company had filed its engineers' report and plat showing territory it intended to serve; that it had filed its acceptance of provisions of the laws of Oklahoma with reference to gas pipe lines of Oklahoma included in Arts. 2 and 3 of Chap. 68, Comp. Okla. Stat. 1921, and had caused this Commission to make an order finding that said acceptance and compliance with the laws of Oklahoma with reference to the organization, purpose, and duties of said Southwestern Natural Gas Company had been complied with. And, it further appearing from said evidence that said Southwestern Natural Gas Company had an ample supply of natural gas from which source gas could be supplied, and was available, and that the carrying capacity of the pipe line so constructed by said Southwestern Natural Gas Company was of sufficient quantity as to meet all demands of this plaintiff, and any contracts already entered into, and that the said Cherokee Public Service Company had applied for gas to be furnished to it under like conditions and terms as furnished to other patrons of said pipe line company, and had been refused a connection.

After the evidence of plaintiff had been so introduced, the defendant, the Southwestern Natural Gas Company, introduced its testimony in which,

among other things, it was shown that the said company had ample supply of gas, that patrons were being solicited for the purchase of gas from said line, and the contracts made between said Southwestern Natural Gas Company and the Muskogee Natural Gas Company at Muskogee, and the Sapulpa Fuel Company at Sapulpa, Oklahoma, were introduced, showing that said companies were being furnished gas by the Southwestern Natural Gas Company, and that a price had been fixed for the gas of 25 cents per one thousand cubic feet for domestic consumers at Muskogee, Oklahoma, and 12 cents per one thousand cubic feet for commercial and industrial gas at Muskogee, Oklahoma, and 12 cents per one thousand cubic feet at Sapulpa, Oklahoma, for all purposes; subject to varying conditions and the contract so made.

Thereupon, both plaintiff herein and the defendant herein announced that they had no further testimony to introduce and said case was submitted to this Commission. The Commission, after the consideration of evidence, as so introduced, made its findings of fact and entered its opinion and order herein as to the intervening petitioner, which said findings, opinion, and order have already been made and filed by this Commission; that said order did not pertain to the Cherokee Public Service Company, a corporation, herein, and that since said cause, as to all the evidence has been submitted, and findings requested that this Commission should now enter its order as to the Cherokee Public Service Company, a corporation. And this Commission after being

## OKLAHOMA CORPORATION COMMISSION

fully advised and having considered all of the evidence so introduced, and all matters with reference thereunto, is of the opinion and finds that the Southwestern Natural Gas Company is required under the laws of the state of Oklahoma, and its announced purpose to sell, without discrimination, natural gas to parties so applying for gas, at and within the territory announced to be served by the said Southwestern Natural Gas Company, and further, the Commission finds that the said Cherokee Public Service Company has asked for and requested the service and is entitled to service at the points where service was so requested to wit: at, or near, the point where connection is now made as shown by the evidence with the Southwestern Natural Gas Company and the Muskogee Natural Gas Company, of Muskogee, Oklahoma. And, further, that the said Southwestern Natural Gas Company having by its own contracts already established a rate or price for furnishing said gas, this Commission will consider the rate so established by the contract between the Southwestern Natural Gas Company, defendant herein, and the Muskogee Natural Gas Company as fair and reasonable, subject to the further hearing and further orders of this Commission thereon. And this Commission further finds that the plaintiff herein, Cherokee Public Service Company, a corporation, is entitled to a connection, and service without discrimination at Muskogee, Oklahoma. It further appears that said Southwestern Natural Gas Company should

have adequate security for the payment of any gas so furnished, to the said Cherokee Public Service Company, a corporation, and that bond in the sum of \$5,000 would be adequate security therefor, providing and guaranteeing the payment of bills so rendered for gas furnished thereunder, said bond to be approved by the secretary of this Commission.

It is therefore *ordered* that the Southwestern Natural Gas Company be and it is hereby required to provide a connection and set meter and furnish natural gas forthwith to the Cherokee Public Service Company at the place now made available for the connection with the other customer or customers of said pipe line in or near the city of Muskogee; and that this order be complied with within ten days from this date; and it is *further ordered* that the Cherokee Public Service Company make and file herein, subject to the approval of the secretary of this Commission, its bond in the sum of \$5,000 conditioned for the payment of the bills so rendered for gas furnished, and that said bond be made, filed, and approved by this Commission before the gas is taken by said Cherokee Public Service Company herein; and that said gas be furnished at the price so established by said Southwestern Natural Gas Company, and the Muskogee Natural Gas Company at Muskogee, Oklahoma, and that this order shall remain in force and effect subject to further hearing before this Commission and orders made thereon.

RE LOUISVILLE-EVANSVILLE TRANSPORTATION CO.

INDIANA PUBLIC SERVICE COMMISSION

Re Louisville-Evansville Transportation  
Company

[No. 1076-M.]

*Rates — Necessity for allocation to support intrastate increase.*

The application of a bus carrier doing both an intrastate and interstate business for increased intrastate rates was denied without prejudice, where the company had failed to allocate to its intrastate service the value of property, expenses, and revenues applied to that service.

[December 12, 1930.]

**A**PPPLICATION of a bus carrier for an increase of intrastate bus rates; denied without prejudice.

APPEARANCES: Robert I. Marsh and George O. Cowan, Indianapolis, for petitioner; no protestant.

SINGLETON, Commissioner: April 19, 1930, the above petitioner filed with this Commission its formal petition seeking authority to increase rates for motor vehicle common carrier service between Louisville, Kentucky, and Evansville, Indiana, passing through and serving New Albany, Indiana, Corydon, Indiana, Boonville, Indiana, and other intermediate points.

The Commission caused an audit to be made of the company's books as of the calendar year 1929.

After due notice public hearing was held in the rooms of the Commission December 4, 1930.

The petition contained as Exhibit "A" a copy of the schedule of rates and charges in effect and sought to be increased; as Exhibit "B," a statement of income and expense for the

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calendar year ending December 31, 1929; as Exhibit "C," the schedule of rates and charges proposed to be put in effect. These exhibits were all a part of the petition.

The Commission introduced as Exhibit "A" a copy of the audit made by its accounting department, and the same was identified by the accountant who made it.

The only witness for the defense was J. P. Archey, president of the petitioner.

At the time of filing the petition the board of directors was not organized in conformity with the requirements of Indiana law, for the reason that the majority of members of said board were not residents of Indiana. The stockholders and directors furnished verified proof that the nonresident directors had vacated their offices and directors were chosen in their stead who were residents of the state of Indiana.

At the same time the books of the

## INDIANA PUBLIC SERVICE COMMISSION

petitioner were found to be kept in the petitioner's office in Louisville, Kentucky, without the consent of the Public Service Commission of Indiana first having been secured so to do. The directors corrected this by establishing an office in New Albany, Indiana, and kept in said office at New Albany the books of record sufficient to comply with Indiana law, as petitioner believed.

During the hearing it developed that petitioner's effort to comply with the Indiana law as to the keeping of its books within the state of Indiana had not been sufficient to meet said requirements. Petitioner alleged good faith in effort.

Testimony was offered in support of petitioner's request for increase in rates, and a part of such testimony was petitioner's Exhibit No. 1, being a profit and loss statement for the period January 1 to August 30, 1930, both dates inclusive.

This petitioner renders both interstate and intrastate service. At the beginning of the hearing the hearing Commissioner suggested to the applicant that it would be necessary to allocate to intrastate service the value of the property and operating expenses properly applicable to intrastate service; also, to differentiate between interstate service and intrastate service in operating expenses; that the jurisdiction of the Public Service Commission of Indiana does not extend beyond the Indiana-Kentucky state line and that the jurisdiction of said Commission is not applicable to interstate service and revenues; that this Commission's jurisdiction would be confined to operating revenues, operating expenses, and

equipment used wholly in intrastate service.

In offering its testimony in support of the petition, the petitioner was not able to so allocate its operating revenues, its operating expenses, and its equipment used in operation. For example, during the ten months ending August 30, 1930, petitioner had charged to operating expense bridge toll in the sum of \$506.03. This was the payment of tolls for use of the toll bridge between Indiana and Kentucky, across the Ohio river, and this item is wholly chargeable to interstate operation. Gasoline and oil during the same period, in the sum of \$4,672.79, was not segregated to determine the portion of such expense that should be charged to intrastate service. Likewise, the wages of drivers in the sum of \$3,169.22; tires and tubes in the sum of \$2,055.43; car repair parts and material \$2,694.14; officers' salaries in the sum of \$2,207.85; insurance in the sum of \$1,696.46, etc.

The total revenues for the ten months ending August 30, 1930, amounted to \$24,072.12. Of this sum \$9,472.87 were fares paid at petitioner's station at Louisville, Kentucky. All of this sum represents exclusively revenues resulting from interstate service.

The distance from petitioner's station in Louisville, Kentucky, to its station in Indiana (which is just within the Indiana-Kentucky state line, on the Indiana side) is 5.9 miles. All service rendered between these two stations is interstate.

The witness testified that approximately 60 per cent or 65 per cent of petitioner's revenues represented fares

## RE LOUISVILLE-EVANSVILLE TRANSPORTATION CO.

paid by through passengers, which is purely an interstate operation. These revenues for the calendar year 1930 amounted to \$34,479.26, which sum was not capable of allocation as between interstate operation and intrastate operation.

On December 1, 1930, the Supreme Court of the United States rendered its decision in the case of *Smith v. Illinois Bell Teleph. Co.* (1930) — U. S. —, 75 L. ed. —, P.U.R.1931A, 1, 51 Sup. Ct. Rep. 65. In said case the question was involved as to whether the local exchange rates authorized by the Illinois Commerce Commission to be charged by the Illinois Bell Telephone Company were required by the Commerce Commission to bear a greater burden of the expense for toll service than should be borne as the result of a part of the use of the property used in rendering local exchange service being used also in rendering toll service. Upon this subject the court said:

"At the threshold of the discussion, we are met with the fact that in these findings the Commission and the court made no distinction between the intrastate and the interstate property and business of the company. . . .

"The separation of the intrastate and interstate property, revenues and expenses of the company is important not simply as a theoretical allocation to two branches of the business. It is essential to the appropriate recognition of the competent governmental authority in each field of regulation.

"In view of the questions presented in this case, the validity of the order of the state Commission can be suitably tested only by an appropriate de-

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termination of the value of the property employed in the intrastate business and of the compensation receivable for the intrastate service under the rates prescribed. *Minnesota Rate Cases* (1913) 230 U. S. 352, 435, 57 L. ed. 1511, 33 Sup. Ct. Rep. 729, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18. As to the value of that property, and as to the revenue and expenses incident to that business, separately considered, there should be specific findings. *Wisconsin R. Commission v. Maxcy*, 281 U. S. 82, 83, 74 L. ed. 717, P.U.R.1930D, 497, 50 Sup. Ct. Rep. 228. . . .

"While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential (*Rowland v. Boyle*, 244 U. S. 106, 108, 61 L. ed. 1022, P.U.R.1917E, 685, 37 Sup. Ct. Rep. 577; *Groesbeck v. Duluth S. S. & A. R. Co.* (1919) 250 U. S. 607, 614, 63 L. ed. 1167, P.U.R.1920A, 177, 40 Sup. Ct. Rep. 38) it is quite another matter to ignore altogether the actual uses to which the property is put.

"It is obvious that, unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden—to what extent is a matter of controversy. . . .

"In view of the findings, both of the state Commission and of the court, we see no reason to doubt that valuable services were rendered by the American Company, but there should be specific findings by the statutory court with regard to the cost of these services to the American Company and the reasonable amount which should be allocated in this respect to

## INDIANA PUBLIC SERVICE COMMISSION

the operating expenses of the intrastate business of the Illinois Company in the years covered by the decree."

The above excerpts are from an opinion prepared and presented by Chief Justice Hughes and approved by an unanimous court.

This opinion had not reached the Commission's desk until after the hearing in the instant case, but the suggestions made at the beginning of the hearing were strictly consistent with the court's decree from which the above quotations are taken. The decision of the United States Supreme Court quoted from above is directly applicable to the instant case. Therefore, this Commission does not have before it facts sufficient upon which to base a conclusion as to whether intrastate rates should or should not be increased.

This Commission has no authority to fix interstate rates to be charged by this petitioner in its interstate operation. Neither has any other governmental body, whether state or national, authority to fix rates to be charged for interstate service by this petitioner. It can charge for that service what it may choose to charge. The only test of the fairness of rates put in effect for interstate service will be the willingness or unwill-

ingness of patrons to pay such rates.

Therefore, the application for authority to increase rates in this cause must be denied, and it will be so ordered.

It is therefore *ordered* by the Public Service Commission of Indiana that the petition of the Louisville-Evansville Transportation Company, for authority to increase rates and charges for motor vehicle common carrier service for the transportation of passengers, be and the same is hereby denied without prejudice.

It is *further ordered* that petitioner's motion requesting permission of this Commission to keep its books relating to intrastate service in its interstate offices at Louisville, Kentucky, be and the same is hereby sustained, and such permission is hereby granted to petitioner until further order of this Commission.

It is *further ordered* that petitioner shall pay to the state of Indiana, through the secretary of this Commission, the sum of \$42.68 for auditing the books of said company, and the sum of \$5.65, for publication of notice of time and place of hearing in said cause—total \$48.33.

McCardle, Chairman, Ellis, McIntosh, and West, Commissioners, concur.

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## NEBRASKA STATE RAILWAY COMMISSION

### Re Lincoln Traction Company

[Application No. 8652.]

*Service — Substitution of bus for rail service — Paving expense.*

A traction company was authorized to abandon street car service on sev-  
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## RE LINCOLN TRACTION CO.

eral of its lines, and to substitute busses therefor in a portion of the abandoned territory, notwithstanding the admitted inconvenience that would result to a considerable number of residents, where it appeared to be financially impossible for the company to assume its share of the paving cost that would be required if tracks were to be located in certain of the streets along the abandoned areas that were included in the city's paving program.

[December 8, 1930.]

**A**PPPLICATION of a street railway company to abandon street car service on certain lines and to substitute busses along a portion of the abandoned route; granted.

APPEARANCES: George A. Lee, Attorney, E. R. Heiny, General Manager, for the applicant; Frank A. Peterson, Attorney, for the city.

By the COMMISSION: This action originates upon application of the Lincoln Traction Company for authority to abandon certain of its street car service on the Havelock and University Place line; for authority to abandon its physical properties now in existence on its two lines between 27th and Clinton and 27th and Leighton streets, and the authority to substitute bus service for the service now being rendered by electric street cars. Quoting from the application, the request respecting abandonment is as follows:

"Applicant now desires and requests authority to abandon street railway service along the following route in the city of Lincoln, Nebraska, to wit: from 27th and O streets to 27th and Leighton; Leighton street from 27th to 32nd; 32nd street, Leighton to Baldwin; Baldwin from 32nd to 41st; 41st street from Baldwin to St. Paul; St. Paul, 41st to 49th; 49th street from St. Paul to Adams; Adams street from 49th to 52nd; 52nd street from Adams to Judson; Judson from 52nd to 56th;

56th street from Judson to Havelock; thence to the end of the Havelock line at 22nd and O streets in Havelock and also 49th street—St. Paul to Walker; Walker from 49th to 57th; 57th from Walker to Adams; Adams from 57th to 52nd.

"The above mentioned route and streets are occupied by the rails of Lincoln Traction Company over which the Havelock and University place street cars now operate.

"Applicant further requests authority for track and service abandonment on 27th street in the city of Lincoln, Nebraska, from Clinton street to Leighton street—a distance of seven blocks."

The application comes as a result of action on the part of the city commissioners of the city of Lincoln in creating a paving district on 27th street between Clinton and Leighton streets, such paving involving approximately seven blocks of double track of applicant's street railway properties. It is estimated and the evidence shows, that if applicant is to share in the expense of this paving, as a result of its tracks being located on the streets in question, as above named, its portion of the paving costs will be, approximately, \$35,000. This

# NEBRASKA STATE RAILWAY COMMISSION

situation occasions the request for abandonment of street railway service and of properties.

It is stated very emphatically by applicant, through General Manager Heiny, that it is financially impossible for applicant to assume this financial burden, involved in the paving of this district. As evidence of this fact, it submits certain studies and exhibits, pointing to the decline in revenue, and passengers from year to year.

Exhibit A consists of a comparison of passengers handled on different railway lines for the first ten months of 1930, as compared with the first ten months of 1929. This exhibit shows a decrease of passengers carried on all lines of 346,253. The University place line shows as follows:

1929	1930	Decrease
347,846	307,261	40,585

Havelock line shows as follows:

1929	1930	Decrease
472,190	365,920	106,270

Exhibit C is a comparative statement of railway operating revenues and expenses for the first ten months of 1929, as compared with the first ten months of 1930, and is as follows:

	1930	1929	Decrease
27th and Y .....	.2263	.2445	.0182
University place ..	.2097	.2327	.0230
Havelock .....	.1739	.2247	.0508
Wyuka .....	.1797	.1956	.0159
South 17th .....	.1927	.2234	.0262
Sumner .....	.1911	.2086	.0175
Normal .....	.1889	.2015	.0126
South 10th .....	.2385	.2718	.0333
College View .....	.2576	.2766	.0190
South 18th .....	.1683	.1813	.0130
Randolph .....	.2326	.2553	.0229

Exhibit B discloses the fact that during the year 1929 there were 6,567,029 fewer passengers carried than in 1919, and Exhibit A, above

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referred to, discloses the fact that the difference would be even greater in the year 1930.

Exhibit D sets forth the revenue per car mile for the first nine months of 1929, as compared with the first nine months of 1930, for each of applicant's lines. In each instance the revenue per car mile is less for the 1930 period than for the 1929 period. The University place line for this period shows a per car mile revenue for 1930 of .2097, and .2327 for 1929, or a decrease of .0230. The Havelock line for this period shows a per car mile revenue for 1930 of .1739, and .2247 for 1929, or a decrease of .0508.

The testimony of General Manager Heiny, respecting the present financial condition of the company, appears to be important. In this connection he said:

*Q.* Has the Lincoln Traction Company any money in the bank or on hand, or any way to raise any money except from its associated companies?

*A.* No sir.

*Q.* Are you still paying the city of Lincoln paving obligations of the past ten years?

*A.* Yes sir, we owe the city approximately \$18,000.

*Q.* I stated in my few remarks at the outset that your total taxing obligations were approximately \$43,000, is that correct?

*A.* That is correct, yes sir.

*Q.* Of that a fairly sizable amount goes to the city for occupation tax?

*A.* Yes sir.

*Q.* Approximately how much?

*A.* Approximately \$5,000 a year.

## RE LINCOLN TRACTION CO.

Q. And quite a considerable item for gas tax?

A. Yes sir, that will amount to about \$6,600 this year.

Q. Your system doesn't run outside of the city?

A. No.

Q. Your personal and real taxes will approximate what, roughly?

A. About \$28,000.

Q. If this project was ordered by the city at this time, and the traction company, is obligated to the extent of \$35,000 will you tell the Commission how it is going to pay anything?

A. I cannot. It will eventually force the traction company into receivership, no doubt.

This Commission is entirely familiar with the constant decline in passengers and the resultant reduction in revenue which confronts the applicant from year to year. It recognizes that in the face of marked economies, which have been effected in many different ways, it is confronted with a constant problem of securing enough revenues to continue to meet fixed charges. The record shows the bonded indebtedness of the applicant to be \$800,000. Annual and fixed interest charges upon this fixed debt are \$40,000. The record shows that under existing revenues, and there appears to be no promise for improvement, applicant will find it difficult, if not impossible, to pay its bond interest. The evidence also shows that applicant has paid no dividends for a number of years; but on the contrary under prior understandings with this Commission has put back into its traction properties every cent over and above expenses and taxes in the

past five years and in addition some new or borrowed capital in the aggregate sum of about \$275,000. The problem is not one peculiar to the Lincoln Company, although it may be somewhat more severe with it. Throughout the entire country, street railway companies are confronted with a serious financial situation. Regulatory bodies have found it necessary to grant them wide discretionary power in matters relating to operation and service, that fixed charges may be met. It seems apparent that the applicant should not be required to contribute to the paving program in the district herein involved. The record does not disclose any such demand on the part of the city commissioners nor does there appear to be any demand on the part of patrons, of the company, that it be required to stand this expense. The Commission certainly feels that every effort should be made by it, and by all interested parties to avert the possibility of any ultimate receivership.

It is the opinion of the Commission, however, that the routing of the busses, as proposed by the applicant, does not satisfactorily serve a certain section of the city, which is now served by street railway cars. However, because of the present condition of certain streets, which must be traversed by these busses, if this territory be accommodated with bus service, it becomes out of the question for this Commission to compel the company to attempt this bus operation. The question of maintenance of streets, and alleys, of the city, is entirely outside the jurisdiction of the Commission. This Commission has

## NEBRASKA STATE RAILWAY COMMISSION

no authority to order or require the improvement of such streets. This duty rests upon the city council of the city of Lincoln, Nebraska. Until the streets in question are graveled or otherwise improved, to provide for all kinds of weather conditions, busses could not be operated under unfavorable weather conditions on these roads. It will be necessary, if bus operation be permitted to authorize such operation under the routes as proposed by applicant, because of the existing road conditions.

Applicant has advised that, if the authorization be granted, seven new busses will be put into service. It was stated that the busses will be of the same class as those now operated by applicant on the streets of Lincoln, except that they would be either a thirty-three or thirty-seven passenger bus. General Manager Heiny testified that the frequency of service under bus operation would be practically the same as under street railway operation. He also testified that it had been his observation that bus service was more satisfactory to the company and the customer, than street railway service. It is regarded as a more comfortable, as well as a more flexible and certain service, than the street railway service.

The Commission concludes, having in mind the facts and circumstances, that the applicant should be granted

the application. It is of the opinion, however, that the routing of the busses, as proposed, is not entirely satisfactory. Accordingly, if, or when, under direction and order of the city commissioners the following streets are paved, graveled, or put in such condition as to permit of all weather operation of busses, to wit, those streets between 31st and 41st streets and Fair and St. Paul streets—an area of approximately ten blocks east and west and nine blocks north and south—the matter may be reopened, and further consideration may be given, respecting the routing of busses on these streets. The conditioning of the streets, of the city of Lincoln, is subject matter, of course, which is under the exclusive jurisdiction of the city authorities.

The Commission is loathe to make this finding. A large number of people have gone into the district described above and made their homes, expecting the development of the city to provide them with streets adapted to all weather traffic. They have been dependent to a large extent on the street car service that will be abandoned, and this Commission stands ready to order suitable transportation service, if and when, the city commissioners of Lincoln have graded the streets and surfaced them with material suitable for continuous service. [Order omitted.]

U. S. Light & Heat Corporation  
v.  
Niagara Falls Gas & Electric Light  
Company et al.

(— F. (2d) —.)

*Constitutional law — Property rights — Right to secure service at fair rates.*

1. A prospective customer's right to receive utility service at a reasonable, equitable, and nondiscriminatory rate is not a property right within the protection of a constitutional guarantee, but is dependent entirely upon the Public Service Commission Law of the state and would not even exist in the absence of that statute, p. 130.

*Rates — Powers of Federal courts — Three-part rate — Service charge.*

2. A prospective customer for a gas utility's service is not subjected to confiscation to the extent of warranting the intervention of a Federal court, by the failure of the utility to serve the former under a three-part rate, including a service charge, with the alleged result that such customer would be required to pay more than his share for service, or by the refusal of the state Commission to permit the utility to adopt such a three-part rate, where the customer's sole right to such service was created by a state statute specifically providing appropriate remedies before state tribunals, p. 130.

*Appeal and review — Collateral attack — Three-part rate.*

3. A gas utility cannot obtain relief from the refusal of a state Commission to permit it to establish a three-part rate with a service charge, by admitting substantially all the allegations contained in a complaint lodged against it in Federal court by a prospective customer alleging confiscation of property because of the failure of the utility to establish such a three-part rate, p. 130.

[February 8, 1931.]

**B**ILL in equity by a prospective gas customer for an injunction to restrain a gas utility from confiscating its property rights by failing to extend service to it under a so-called three-part rate with a service charge, and to have declared unconstitutional a provision of the New York Public Service Commission Law forbidding the establishment of a service charge; upon appeal from a decree in favor of the plaintiff taken by the New York Public Service Commission as codefendant, the decree of the lower district court was reversed.

Before: Manton, Augustus N.  
Hand, and Chase, Circuit Judges.  
P.U.R.1931B.

APPEARANCES: Charles G. Blake-  
slee, Solicitor for Public Service Com-

## UNITED STATES CIRCUIT COURT OF APPEALS

mission of the State of New York, defendant-appellant; Russell B. Burnside, of counsel; Parker & Parker, Attorneys for U. S. Light & Heat Corporation, defendant in error; Dudley, Gray & Phelps, Solicitors for Adolph M. Hamann, defendant in error; Alan V. Parker, of counsel, for U. S. Light & Heat Corporation, and Alpheus R. Phelps, of counsel, for A. M. Hamann; Williams & Williams, Attorneys for Niagara Falls Gas & Electric Light Company, and Harry D. Williams, of counsel; Arthur J. W. Hilly, Corporation Counsel, Solicitor for the City of New York, *Amicus Curiae*; M. Maldwin Fertig, Harry Hertsoff, and Judson Hyatt, of counsel.

MANTON, Circuit Judge: The plaintiff has a place of business in the city of Niagara Falls, where it is a user of fuel and claims that the use of gas by it would be more economic, efficient, and useful. This city is served with gas by the Niagara Falls Gas & Electric Light Company and the plaintiff, while not claiming to be a consumer of gas, contends that it has a property right to the service of the gas company in that city. Hamann, a consumer of gas, who was permitted to intervene by court order, owns a private residence in Niagara Falls, where he uses gas. Both seek to have Chap. 898 of the Laws of 1923 declared unconstitutional, claiming that its enforcement deprives them of property without due process of law under the Fourteenth Amendment.

The bill of complaint alleges that the rates at which gas may be furnished, as prescribed by the orders of the Public Service Commission, are

confiscatory of the property of the gas company; that the gas company may not change such rates except by filing with the Commission a schedule of statements of proposed changes of rates; that the gas company filed with the Commission a schedule of rates proposing to furnish gas in the city of Niagara Falls on a three-part rate plan; that the Commission has issued orders forbidding the company to supply or distribute as under said plan. It alleges that there are six known bases for the sale of gas by public utility corporations: (1) flat rate; (2) flat rate with service charge; (3) flat rate with a minimum bill; (4) block rate; (5) block rate with a minimum bill, and (6) three-part rate. After defining what is meant by these respective charges, the bill alleges that none of such bases is a correct basis or plan except the three-part rate plan; that the right to be furnished with gas is a property right of the plaintiff; that the furnishing of gas upon any other basis or plan than that of the three-part rate results in discrimination as between consumers; that certain consumers are required to pay more than their equitable proportion or share of the cost and that they are deprived of their property without due process of law.

Subdivision 6, of § 65 of the Public Service Law provides:

"6. Service charges prohibited. Every gas corporation shall charge for gas supplied a fair and reasonable price. No such corporation shall make or impose an additional charge or fee for service or for the installation of apparatus or the use of apparatus installed."

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The claim of confiscation is made by the plaintiff upon the theory that it belongs to a class of consumers of gas in the city of Niagara Falls; that its property is confiscated as one of this class because its right to such service is taken away. Furthermore, that this provision of the Public Service Law impairs the obligation of the contract between the state and the Niagara Falls Gas & Electric Light Company and the people of the city of Niagara Falls in violation of Art. 1 of the Constitution of the United States.

The three-part rate has three charges: (1st) The customer's charge which consists of expenses of book-keeping, billing, collecting, setting, removing, and repairing meters, gratuitous complaint service, office rent, meter reading, and a part of the fixed charges on the physical property. This charge is intended to be made regardless of whether the gas is used in small or large quantities or not at all. (2d) A demand charge which consists of that part of the company's expenses incidental to providing and maintaining a production, transmission, and distribution system of sufficient capacity to render service as required. This charge consists of the remainder of the fixed charges, such as interest, taxes, and depreciation on the necessary plant and part of the operation and maintenance expense of the physical property. The charge is distributed among the customers in proportion to the demand made upon the company by each customer and in the proportion which each customer contributes toward the creation of the so-called demand expense. (3d) The gas charge which is the

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cost of the company's production, transmitting, and distributing the gas, and is proportional to the amount of gas handled. It represents the cost of the gas plus a certain proportion of the cost of maintaining and operating the transmission and distribution system. It is said to be the cost of the commodity delivered as distinguished from the cost of the service. Each of these items must of necessity enter into the calculation of what is the company's fair return.

The Public Service Commission has answered admitting its prohibition against such service charge and alleges that it has fixed by order the rates to be charged by the gas company.

The gas company has filed an answer admitting in substance all the allegations of the complaint and prays for relief as follows:

*"Wherefore*, this defendant prays the court if it shall see fit to grant any of the prayers of the plaintiff herein, that it grant also that part of the prayer of the plaintiff, which is found in such part of Subsection 'D' of the plaintiff's prayer as prays that the Public Service Commission of the state of New York, be enjoined from visiting any penalty on this defendant for its violation of the said orders above referred to and said Chap. 898 of the Laws of 1923, or any provision or provisions thereof, and that portion of subsection 'E' of the said prayer which prays that the city of Niagara Falls, the mayor and council thereof, and the Public Service Commission be enjoined from interfering with the collection of a reasonable rate which should be based on a three-

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part rate, or make such other provisions as your Honorable Body may consider to the best interest of equity and the protection of this defendant in its decree."

The city of Niagara Falls has answered, supporting the Public Service Commission's position.

The proofs adduced in behalf of the plaintiff were apparently supplied by the gas company. The gas company has not filed a counterclaim or cross bill as it might have under Rule 30 of the Equity Rules.

The Public Service Commission order under which the gas company rates were fixed was dated December 28, 1920. No complaint was offered against such rate by the gas company; no court proceedings were instituted; nor was a claim made of the violation of its constitutional rights because of the confiscation of its property. On July 17, 1923, and February 15, 1924, the gas company filed new tariff schedules proposing its Three-Part Rate. The Commissioner on October 17, 1923, and December 8, 1924, disapproved these proposed charges and refused to receive them for filing. Neither the plaintiff nor the intervener Hamann have complained of the rates as fixed by the Commission under the several provisions of the Public Service Law.

[1-3] Section 65 of the Public Service Law requires safe and adequate service and just and reasonable charges and forbids unjust discrimination as well as unreasonable preferences. It provides a regulatory scheme relating to gas and electric utility companies' charges, all under the supervision of the Public Service Commission. It permits the utilities to estab-

lish classifications of service based upon the quantity used, the time when used, the purposes for which used, the duration of use, and upon any other reasonable considerations and provides for schedules as to just and reasonable graduated rates applicable thereto, but it forbids in subdiv. 6, as quoted above, service charges. Section 66 grants power to the Commission with respect to the general supervision of utility corporations; subdiv. 5 makes provision for complaints and hearings thereon as to charges and discriminations; subdiv. 14 authorizes the Commission to fix such rates and charges as are just and reasonable and permits it to establish classifications of services based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration. By § 71, the Commission is authorized to hear complaints as to quality and price of gas. It provides that upon the complaint in writing of not less than twenty-five customers or purchasers of gas, or upon complaint of the gas corporation, the Commission shall investigate as to the cause for such complaint. By § 72, provision is made for the hearing on such complaint and authorizes the Commission to make orders fixing the price of gas or electricity or requiring improvement of service. Thus the plaintiff, if aggrieved, might have joined others, twenty-five in number, and have been heard and afforded relief under the provisions of this law. Matters respecting rates, charges, or classification of service might have been considered. These provisions of the state law providing for regulation of rates, charges, and service are pre-

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sumptively valid and constitutional. (Chicago, M. & St. P. R. Co. v. Tompkins (1900) 176 U. S. 167, 44 L. ed. 417, 20 Sup. Ct. Rep. 336; Ex parte Young (1908) 209 U. S. 123, 52 L. ed. 714, 28 Sup. Ct. Rep. 441, 13 L.R.A.(N.S.) 932, 14 Ann. Cas. 764.)

The plaintiff's and Hamann's right to be served with gas is dependent upon § 62 of the New York State Transportation Corporations Law, now § 12 of the present Transportation Corporations Law (Chap. 762 of the Laws of 1926; Consol. Laws, Chap. 63, § 12). It provides that, upon application in writing by the owner or occupant of a building or premises within a hundred feet of any main laid by a gas light corporation or wires of the electric light corporation, and upon payment by him of all moneys due from him to the corporation, the corporation shall supply gas and electric light. Except for this provision of law, there is no duty or obligation on the part of the gas company to furnish service to any applicant. (Tismer v. New York Edison Co. (1915) 170 App. Div. 647, P.U.R. 1916A, 949, 156 N. Y. Supp. 28; People ex rel. New York Edison Co. v. Public Service Commission, 191 App. Div. 237, P.U.R.1920C, 526, 181 N. Y. Supp. 259, affd. (1920) 230 N. Y. 574, 130 N. E. 899. And since the Public Service Law became effective, jurisdiction has been vested in the Commission to require gas and electric light companies to extend their plants to territories in which they have franchise rights when such extensions are reasonably required. (People ex rel. Woodhaven Gas Light Co. v. Public Service Commission, 269 U. S.

244, 70 L. ed. 255, P.U.R.1925E, 827, 46 Sup. Ct. Rep. 83.)

A consumer or prospective consumer of gas in the territory has only such right as the Public Service Law gives him to complain of charges or service. As a general rule, a seller may fix the price of his product at what he pleases or dispose of it at any price, but the courts have determined that where property is affected with a public interest, it is no longer *juris privati*; it becomes clothed with a public interest when used and sold in a community under a franchise grant. Thus the gas company's business becomes subject to the Public Service Law by reason of the interest which the public has. It must submit to the control by the Public Service Commission for the common good to the extent which it has clothed its property with public interest. But a citizen has no vested rights in statutory privileges or exemption (Cooley, Constitutional Limitations, 8th Ed. 792). This gas company became bound to furnish gas within the city of Niagara Falls by reason of the Public Service Law. The consumer was not obliged to purchase gas; he was privileged to do so. A private right may be interfered with so long as it is not vested (Cooley, Constitutional Limitations, 8th Ed. 749) and a right is not vested unless it is something more than a mere expectation as may be based upon an anticipated continuation of the present general laws. (Brooklyn Union Gas Co. v. New York (1906) 50 Misc. 450, 100 N. Y. Supp. 570).

But it is said that the state court of appeals in International R. Co. v. Rann (1918) 224 N. Y. 83, 120 N. E. 153, held substantially that the right

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to be served with gas is a property right. There the street railway system furnished service to passengers by three corporations, each operating on its own lines, charging passengers an extra fare for transferring to the cars of either of the other lines. An agreement was made between the city and the several companies to provide a general transfer system between the three companies and to fix a rate of compensation which they should pay the city for the franchises. This was ratified by the state legislature (Laws of 1892, Chap. 151) and was valid (§ 93 of the Railroad Law). It regulated the relations between the city and the companies and the companies agreed to charge only 5 cents for transporting passengers from any point on any of the lines to any other point on any of the other lines by the most direct route. Transfer charges were abolished. The plaintiff railway company which became a successor of the three former companies sought a consent of the city for a change and the application was for a writ of mandamus directing the corporation counsel of the city to sign a stipulation of discontinuance of the franchise tax certiorari proceedings instituted by the railway company. The point at issue arose over the construction of a certain provision of the charter of the city of Buffalo. It provided that:

"No resolution of the council, appropriating money other than for regular payrolls or to meet any legal obligation of the city, and no resolution incurring or providing for the incurring of any expenses, other than for repairs immediately necessary, . . . and no resolution disposing of any property or rights of the city, shall

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become effective until thirty days from its adoption; and its operation shall be suspended and it shall be reconsidered and submitted to the electors, in the same manner as in this section provided for the suspension, reconsideration, and submission of any ordinance."

The court held that the city was the real party to the agreement, individual inhabitants were not nor could they become parties thereto; they merely have the benefit of the right under the agreement while it remains in force. The rates which the court was considering were not common law rates but rates arising under the express agreement between the city and the railway company and later ratified by the legislature.

The state court of appeals has sustained the power of the Commission to regulate rates where it has done so within the scope of its determination. (*People ex rel. Garrison v. Nixon* (1920) 229 N. Y. 575, P.U.R.1921A, 27, 128 N. E. 255.)

The plaintiff and the intervener Hamann have no property rights which are affected by subdiv. 6 of § 65 forbidding service charge. Their right to service exists only because of the statute referred to. It is not such property right as may form the basis of a claim for confiscation or discrimination. If there be an exercise of arbitrary power against the consumer and wrongful enforcement by the Commission of the Public Service Law, a remedy is afforded under the provisions referred to for the consumer to lodge his complaint, obtain a hearing and redress. (*Rochester v. Rochester Gas & E. Corp.* 233 N. Y. 39, P.U.R.1922C, 793, 134 N. E.

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828.) The gas company likewise has a remedy if its property is being confiscated by first proceeding under the provisions of the Public Service Law and if, after such proceedings, it feels aggrieved it may test its complaint in proceedings in the state court or by suit for an injunction based upon a

claim of confiscation of its property without due process of law. It cannot obtain this relief in this suit by merely admitting substantially all the allegations of the complaint and asking relief as above referred to. The bill should be dismissed with costs.

Decree reversed.

NEVADA PUBLIC SERVICE COMMISSION

Re Water Company of Tonopah

[I. & S. Docket No. 51.]

*Return — Gross revenues — Collection of delinquent accounts.*

1. Proceeds collected from a judgment obtained by a utility against a manufacturing customer for payment of services previously rendered, are credited to operating revenues as of the year during which they are received, p. 134.

*Rates — Reasonableness — Point of diminishing return.*

2. A water company was refused authority to put into effect increased rates where, although its existing return was admittedly inadequate, its earning capacity was such that it was almost certain that such increase would be followed by a still further decline in operating revenues by reason of diminishing patronage, p. 135.

[January 31, 1931.]

**A**PPPLICATION of a water utility for increased rates; denied.

APPEARANCES: Frank B. Warren, Secretary, for the Commission; J. H. Greenwood, General Manager, for the Water Company; Lowell Daniels, District Attorney, for Nye County and the Citizens of Tonopah generally.

by this company to consumers located at Tonopah, Nevada. The increased schedules were originally filed on November 18, 1930, to become effective December 20, 1930. They have twice been suspended for a period of thirty days, or until February 20, 1931.

By the COMMISSION: This proceeding arises upon the filing, by Water Company of Tonopah with this Commission, of an increased schedule of rates covering water service rendered

Hearing was had at Tonopah on January 9, 1931. The water company in its memorandum accompanying the schedules of rates sets forth the reasons why it feels the increased rates should be permitted to become effective.

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tive. It is maintained that because the water company is not permitted to earn a large return during periods of prosperity it cannot be expected to share losses in periods of depression. It was also alleged that during great periods of prosperity at Tonopah the water company has not been permitted to make a fair return upon the fair value of its property.

Mining operations have been reduced considerably in Tonopah, and the gross revenues of the company have steadily decreased since 1925. It is alleged that the present fair value of the property devoted to public service, based upon this Commission's engineering valuation made in 1920, less depreciation, is \$243,000. It is alleged that the company has averaged less than a fair return on the fair value of its property since 1925. The increased schedules of rates will increase the company's revenue it is estimated about \$5,000 per annum, and increase the estimated net earnings for 1930 from .15 of 1 per cent to approximately 2 per cent upon the above alleged value of \$243,000. It is also stated that the company, "recognizing the lower economic status of the company, is not at this time demanding a fair return, but it is adopting a rate structure that will allow it to make its expenses, and possibly earn some slight return on its investment."

The company appeared at the hearing and in general endeavored to support the contentions in the memorandum above referred to. The citizens of Tonopah appeared, represented by the district attorney, and testified, without exception, that the conditions in Tonopah were very bad, with the

principal mine in the district preparing to shut down, which has since actually taken place. At present there is no mining corporation operating any property in the Tonopah district, the only employment being provided by leasers, who are operating in some of the property owned by the large mining companies.

We do not feel that much will be gained by a lengthy discussion of the general principles of valuation, rate of return, etc., as affecting public utilities generally in the United States under existing court decisions. Certainly, conditions existing at Tonopah at this time do not justify the application of rules generally applicable to cases of this character. The company itself admits the impossibility of increasing its rates to the point where a fair return may be had upon what it considers the fair value of its property. On the other hand, the citizens of Tonopah contend strongly that the operating expenses of the company are burdensome and excessive considering the economic conditions of Tonopah and the necessity for retrenchment and economy of operations in all lines of business. They point to the fact that the water company maintains three general officers, with salaries totaling \$7,100, in addition to a bookkeeper at Tonopah. Certainly, these operating expenses are to say the least questionable, in the light of present conditions and the earning power of the water company.

[1] There is one other matter which might be mentioned in this connection. The water company collected a judgment against the Tonopah Extension Mining Company, which netted the water company between \$18,-

## RE WATER COMPANY OF TONOPAH

000 and \$19,000 during the year 1930. This is for water furnished the Tonopah Extension Mining Company, which had never been paid for by the mining company. Under any reasonable theory of accounting this income is creditable as operating revenue by the water company of Tonopah, and inasmuch as it has never been shown in the company's reports, it is, we believe, creditable to the year within which it was received, namely 1930. It would change the situation materially, with respect to net earnings of the water company for the year 1930, if this \$19,000 were to be added to the net earnings of the water company for that year. As stated above, however, we do not believe that this is a case which merits detailed discussion of operating expenses, revenue, etc., as

the company itself admits the impossibility of the Commission fixing rates which will earn a fair return.

[2] It is our conclusion that this Commission would not be justified at this time in authorizing any increase in water rates at Tonopah. There is no assurance that the increased rates would produce any increased revenue, in fact it is almost certain that there will be a further decline in the operating revenue of the Water Company of Tonopah, under almost any schedule of rates which might be applied. Under all the facts and circumstances of record in this proceeding we are of the opinion and find that the present rates of the Water Company of Tonopah, are, all things considered, fair and reasonable. It will be so ordered.

[Order omitted.]

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## MARYLAND PUBLIC SERVICE COMMISSION

### Re Tidewater Toll Properties, Incorporated

[Case No. 3050, Order No. 16886.]

#### *Security issues — Excessive cost of financing.*

1. The application of a corporation, contemplating the construction of a toll bridge, for authority to issue securities to be sold to the public at \$800,000, while the enterprise would only cost approximately \$600,000, was refused, as failing to afford proper protection to investors on the ground that the extra \$200,000 for cost of financing was excessive, p. 141.

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#### *Intercompany relations — Entangling alliances.*

The Commission, in declining to approve a proposed financial set-up of a toll bridge utility because of excessive cost of financing, suggested that the utility should before renewing its application withdraw from all entangling alliances with a so-called financing company, particularly with one against whom the attorney general had proceeded for fraudulent stock sales, p. 141.

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### *Security issues — Promotion and organization — Assignment of definite value.*

The Commission, in declining to approve a proposed financial set-up of a toll bridge utility, suggested that the utility should, before renewing its application, assign a definite value in dollars for services rendered by organizers and promoters, whether paid for in cash or securities, p. 142.

### *Security issues — Common stock — Corporate control.*

The Commission, in declining to approve a proposed financial set-up of a toll bridge utility, suggested that the utility should, before renewing its application, abandon plans for the issuance of a certain class of common stock of one cent par value, the apparent purpose of which was to give control of the enterprise to a few persons at a nominal price, p. 142.

### *Security issues — Issuance of stock in units.*

Statement to the effect that while sale of stock in units of preferred and common may be made, the issuance of stock ought to be in units, and at the same price per unit, p. 142.

### *Security issues — Underwriters — Availability of construction funds.*

The Commission recommended that a toll bridge utility, before resubmitting a proposed financial set-up, after one had already been disapproved, should have its entire issue of stock underwritten in such a manner that the whole amount required for construction purposes could be available in advance of construction and drawn down as construction proceeds, p. 142.

### *Security issues — Spread between selling and net price.*

Statement that the spread between selling price of a toll bridge company's stock and the net price of the same ought not to exceed 10 per cent, p. 142.

[January 21, 1931.]

**A**PPPLICATION of a toll bridge utility for authority to issue securities; denied without prejudice, and recommendations for future submission made.

**APPEARANCES:** John Henry Lewin, People's counsel; Eugene Frederick, for the applicant; Lawrence E. Ensor, and Noah E. Offutt, for C. Ellsworth Sauter.

By the COMMISSION: In this proceeding Tidewater Toll Properties, Incorporated, is before this Commission upon petition for approval of a financial plan and an issue of securities under that plan, for the building of a highway toll bridge across the Choptank river near Cambridge, Maryland. It is a Maryland corporation. P.U.R.1931B.

tion and has acquired, by Acts of Congress, franchises for the construction of bridges across the Choptank and Patuxent rivers. The proposed bridge across the Patuxent is not involved in these proceedings, the securities proposed to be issued being for the Choptank river bridge and for meeting certain obligations resulting from relations of Tidewater Toll Properties, Incorporated, with American Toll Properties Corporation, a dormant corporation which formerly owned congressional franchises for bridges across the Choptank and Patuxent riv-

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ers, which franchises expired by limitation shortly after they had been acquired by Tidewater Toll Properties, Incorporated. These American Toll Properties Corporation franchises were predecessor franchises to those now held by Tidewater Toll Properties, Incorporated.

Tidewater Toll Properties, Incorporated, was before this Commission in an earlier hearing, held on February 19, 1930, also for approval of securities and a financial plan. At that time, however, the corporation's congressional franchises were not complete. The original franchises to American Toll Properties Corporation having lapsed, new bills were introduced in Congress to revive them in the name of Tidewater Toll Properties, Incorporated. The Senate had passed them but they had not been passed by the House of Representatives, nor signed by the President. The Commission dismissed the application, specifically, because the corporation had no lawful right to build the bridges at that time, or to issue securities for such purposes.

Under the financial plan submitted at that time the corporation asked for authority to issue 100,000 shares of  $7\frac{1}{2}$  per cent cumulative, participating preferred stock of a par value of \$10 a share, 33,333 shares of Class A common stock of no par value, and 166,667 shares of Class B common stock of a par value of one cent a share. Class A and Class B common stock was to have equal voting rights, and under certain conditions, such as failure to pay dividends upon it, the preferred stock was to have voting rights.

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The corporation planned to sell to the Security Sales Corporation of Maryland 60,000 shares of its preferred and 20,000 shares of its common stock for \$600,000. The Security Sales Corporation was to sell this stock to the public in units of three shares of preferred and one share of Class A common at \$40 per unit, thus receiving \$10 for selling each unit. If it could have sold the 20,000 units necessary to produce the \$600,000, said at that time to be required for the building of the bridge, it would have received \$200,000 for selling the stock. In addition it would have received 17,500 shares of the Class B common stock.

In dismissing the case the Commission stated that in fairness it felt the applicant ought to be advised of the Commission's views as to the financial plan, so that the plan might be modified to meet Commission approval if submitted later. The Commission, in its opinion of April 8, 1930 (P.U.R. 1930C, 248, 250) said:

" . . . the Commission feels that it would be unwise to approve such a plan of financing as has been submitted. It appears to be unsound and it fails to afford sufficient protection to those who would invest their money in the enterprise. The spread between what the investors would pay, and what the company would receive for the stock, 25 per cent, is far too great. If, as counsel for the applicant explained, it cannot be done in any other way, then it seems to the Commission that it had better not be done at all. In the plan as outlined no one seems to take any risk except those who are to be asked to buy these units of stock at \$40 per unit, and after they have

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bought their stock and taken their risk, they are to have but slight voice in the management and control of the enterprise."

In the amended petition, submitted after congressional sanction of the bridge was complete, and heard by this Commission on December 1 and December 8, 1930, the financial plan of the corporation was modified with respect to the Class B stock.

It is proposed to issue stock units consisting of 3 shares of preferred, 1 share of Class A common, and 3 shares of Class B common at \$40 per unit to the public, netting the corporation \$30 per unit. Just how this stock is to be marketed was not disclosed by the testimony which was very indefinite on this point. It was testified by Colonel Henry C. Perring, president of Tidewater Toll Properties, Incorporated, that it might be financed within one corporation, "that this corporation would take the whole issue and turn over to us \$600,000 for construction and other proper purposes" (Record, p. 145). Just what corporation proposed to do such underwriting, and how, and at what price it would sell the stock to the public, the Commission was not informed. Colonel Perring, however, did state that the underwriting corporation would get no more than \$800,000 for the stock it sold and would retain \$200,000 as underwriters' charges. It is assumed that the underwriting corporation mentioned would offer the stock to the public on the basis described in the amended petition, and outlined above.

An analysis of the plan proposed in the application, made by the chief Auditor of this Commission, which

analysis is part of the record in this case, contains the following:

"The total shares to be issued under this plan are 60,000 preferred, 20,000 Class A common, and 60,000 Class B common. Thus the purchasers of the preferred stock, if the plan be consummated, will have 80,000 votes.

"The petition further states that no further issues of Class A common stock are contemplated, but that 50,000 shares of Class B common (par value one cent or a total par value of \$500), are to be issued individually and 16,666 shares of the same stock are to be issued in consideration for the assignment of Federal franchises.

"From the above it would appear that the preferred stockholders would have 80,000 votes, whereas the other stockholders would have but 66,666 (50,000 plus 16,666) votes, but this is not in agreement with the statement in the second paragraph of page 3 of the petition, to the effect that the voting powers of the purchasers of the preferred will be equal to the total voting powers of the stock to be issued under the plan. In other words, the petition indicates that 80,000 shares of Class A and Class B common together are to be issued to others than purchasers of the preferred, whereas only 66,666 shares are accounted for.

"It is further noted that in paragraph three of page 1 of the petition it is stated that all of the Class B stock except 667 shares is to be issued, whereas the petition accounts for only 126,660 shares out of a total authorized issue of 166,667 shares, leaving a balance to be accounted for of 40,000 shares instead of 667 shares.

"The total voting rights amount to

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200,000. The preferred stockholders under the proposed plan are to get 80,000 of such rights. This leaves a balance of 106,667 voting rights in the Class B common alone, 16,666 of which are to be exchanged for Federal franchises and the balance has a par value of but \$900.01. Thus an investment of the franchises plus a cash investment of less than \$900 would give voting control of the corporation, subject to the approval of this Commission as to the issuance of the additional stock.

"As stated above, there are several discrepancies in the petition, but assuming the petition to mean that the purchasers of preferred would have equal voting rights with the other stockholders, it necessarily follows that the persons who really put up the money would not have control of the corporation but would only equal control of the corporation with the other stockholders, and this equality could be destroyed by the issuance of one share to either side for the consideration of one cent."

There are other features of the situation involving Tidewater Toll Properties, Incorporated, upon which the Commission does not look with favor, and which it regards as inimical to the public interest. One of these is its subsidiary relationship to American Toll Properties Corporation, which is to receive a large block of Class B common stock in exchange for franchises that lapsed. The record shows that American Toll Properties Corporation had acquired congressional franchises for the building of 57 bridges across streams in various parts of the United States. All of these franchises expired by limita-

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tion except those for the Choptank and Patuxent rivers, and for one across Bear creek near Sparrows Point, Maryland. The Sparrows Point franchise was sold to the McClintick-Marshall Company and the other two were transferred to Tidewater Toll Properties, Incorporated, but, as heretofore stated, later lapsed, and new franchises were acquired in the name of Tidewater Toll Properties, Incorporated. American Toll Properties Corporation appears to have been organized by one E. M. Elliott, with Charles R. Hall, head of the Manhattan Capital Corporation, and others for the purpose of marketing securities for the erection of bridges under the company's congressional franchises. A memorandum in the record indicates that American Toll Properties Corporation had "properties," in the shape of franchises, contracts, etc., which had been acquired at a cost of \$255,730.63 which may have a resale value of \$6,153,230.63 and "that custom and precedent establishes \$6,153,230.63 as a fair worth" of these properties which are said to have cost \$255,730.

Colonel Henry C. Perring, president of Tidewater Toll Properties, Incorporated, testified (Record page 22) that American Toll Properties Corporation "Doesn't own anything now," although it will own a large block of the Class B common stock of Tidewater Toll Properties, Incorporated, if such stock is permitted to be issued.

It is a matter of common knowledge that the Manhattan Capital Corporation, and the American Toll Properties Corporation entered into an extensive campaign for the sale of toll

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bridge stock early in 1929; that, after an exhaustive investigation the attorney general of Maryland, on July 8, 1929, passed an order, finding that "Manhattan Capital Corporation and the American Toll Properties Corporation, and various officers, agents, employees, and stock salesmen of said corporation have been making false, misleading, and deceptive statements to citizens of this state in an effort to promote sales of the stock of the American Toll Properties Corporation," that the "false, misleading, and deceptive statements and representations, above referred to, constitute a scheme or artifice to defraud the citizens of this state" and ordered the stock selling stopped. It appears that Charles R. Hall and his associates allowed the Manhattan Capital Corporation to die, or become moribund, and organized the Security Sales Corporation in its place. Under the original application before this Commission, the Security Sales Corporation was the agency chosen for marketing the stock of Tidewater Toll Properties, Incorporated.

A statement of receipts and disbursements of Tidewater Toll Properties, Incorporated, from October 8, 1929, to July 14, 1930, shows receipts of \$1,791.50 and disbursements of \$1,789.90 leaving a balance of only \$1.60. Evidence is before the Commission that certain units of stock of Tidewater Toll Properties, Incorporated, have been sold to the public by Securities Sales Corporation, without the issue of such stock having been authorized by the Public Service Commission, and that upon complaint having been made by at least one purchaser, he was assured by counsel for Tide-

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water Toll Properties, Incorporated, that "proper adjustment can be made with those persons to whom stock was previously sold, even if the Public Service Commission should withhold its consent to the sale of additional stock." This assurance of a "proper adjustment" is based on the right of Tidewater Toll Properties, Incorporated, to receive 1,035 shares of the common, no par stock of the Sparrows Point Bridge Company, if and when such stock is authorized to be issued by this Commission. It is obvious that no "proper adjustment" could be made out of a balance on hand of \$1.60 in the treasury of Tidewater Toll Properties, Incorporated. The value of stock in the Sparrows Point Bridge Company to which Tidewater Toll Properties, Incorporated, may be entitled, if and when it shall be issued, is indefinite.

It also appears from the record that C. Ellsworth Sauter, a farmer who had inherited a few thousand dollars, was induced to subscribe, through the Manhattan Capital Corporation, to 200 units of stock of American Toll Properties Corporation for \$8,000, on which he paid \$4,000, that on September 17, 1929, C. M. Hall induced him to take in lieu thereof, a similar stock in Tidewater Toll Properties, Incorporated, since which time demand has been made on him for the balance of \$4,000 on his subscription of \$8,000, which Sauter has declined to pay, and that Sauter was told he could get his money back if he was not satisfied, although efforts to get his money back have failed. What has become of Sauter's money was not disclosed. Apparently it has not passed to Tidewater Toll Properties, Incorporated,

## RE TIDEWATER TOLL PROPERTIES, INC.

although Mr. Sauter has accepted Tidewater Toll Properties, Incorporated, stock. It is such matters as these, which, aside from manifest objections to the financial plan, raise grave doubts in the mind of the Commission as to the soundness of the project.

The Commission recognizes the desirability of a bridge in the location indicated. Such a bridge would undoubtedly be a convenience to the public, and with a proper charge for tolls, ought to be reasonably sure of earning a fair return on the fair cost of the bridge, which cost ought, at this time, to represent fair value. The cost of the bridge is estimated to be \$512,000 for construction, and it might not be unreasonable to add \$88,000 for preliminary expenses for organization, working capital, and the like, and such expenses as might be incidental to the early operation and maintenance of the bridge until the public could become accustomed to using it. This would amount to the \$600,000 which Tidewater Toll Properties, Incorporated, expects to get out of the stock, for which the public is expected to pay \$800,000. An 8 per cent return on this \$600,000 would be \$48,000 per annum and the bridge might reasonably be expected to earn this, plus the actual operating costs and a proper allowance for depreciation.

It appears that the design of the bridge and its draw span have met with the approval of the War Department, and that rights have been secured for connecting the bridge with highways on each side of the Choptank, so that all that remains to be done at this time is to arrange for a plan of financing that will be fair to

the public, will insure to those who provide the money for the project control of it in proportion to their investment, and which will meet with the approval of this Commission. Such approval by this Commission is legally necessary, and that it is also desirable from the point of view of the projectors of the enterprise is shown by the testimony (pages 139, 140, 150), it being admitted that such approval would be helpful in selling stock of Tidewater Toll Properties, Incorporated, consequently the Commission must see to it that any plan it approves must be a proper plan.

[1] It considers the plan of financing as submitted to it in the amended application to be unsound, and one that fails to afford proper protection to investors. Therefore, it cannot approve it. It feels that if a \$600,000 enterprise cannot be financed without having the public pay \$800,000 for it, the extra \$200,000 being the cost of financing, then it had better not be undertaken at all. Certainly in a valuation proceeding the Commission would never approve a  $33\frac{1}{3}$  per cent allowance for cost of financing.

In the hope of being helpful and of facilitating the construction of a bridge which it believes will be of convenience to the public, the Commission feels free to make certain suggestions, compliance with which will meet its objections to the plans of the applicant, so far as financing the project is concerned.

(1) It feels that Tidewater Toll Properties, Incorporated, should withdraw from all entangling alliances such as those with the American Toll Properties Corporation whose record, in view of the action of the attorney

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general of Maryland, is none too savory, and stand on its own feet. So far as the record discloses, it has received nothing of value from the American Toll Properties Corporation, nothing of value which it could not obtain and has not actually obtained in its own name, viz., congressional franchises for bridges across the Choptank and Patuxent rivers. The Commission cannot admit value for the Patuxent river franchise which will lapse in a few months unless the bridge is built, and there seems to be no immediate prospect of its building. Moreover, such franchises could probably be secured from the general assembly of Maryland if the conditions under which the bridge were to be erected and the rates of toll to be charged were fair to the public. The general assembly is now in session.

If Tidewater Toll Properties, Incorporated, feels itself obligated to American Toll Properties Corporation for bridge franchises which it allowed to lapse the Commission will raise no objection to the payment to it in cash, the amount of the par value of the 16,666 shares of Class B stock it was to receive in exchange for franchises, or \$166.66.

(2) A definite value in dollars ought to be put on the services rendered or to be rendered the applicant by its organizers and promoters and these services paid for in cash; or if stock should be taken in lieu of cash, it ought to be stock of the same character, in the same ratio and at the same price as that sold to the investing public.

(3) Plans for the issuance of Class B common stock of one cent par value, or stock of such character, ought to

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be abandoned. The Commission feels that this stock is for the purpose of giving control of the enterprise to a few persons at a purely nominal price and that this ought not to be permitted.

(4) While sales of stock in units of preferred and common may be made, if this is done all the stock issued ought to be in units, and at the same price per unit. There ought to be no separate blocks of no par or nominal par stock issued or held for purposes of control.

(5) The entire issue of stock ought to be underwritten in such manner that the whole amount required for the construction of the bridge may be available in advance of the beginning of construction and drawn down as construction proceeds.

(6) That the spread between the selling price of the stock and the net price to Tidewater Toll Properties, Incorporated, ought not to exceed 10 per cent.

These suggestions are made in view of the decision of the court of appeals of Maryland in *Laird v. Baltimore & O. R. Co.* (1913) 121 Md. 179, 187, 88 Atl. 347, 47 L.R.A.(N.S.) 1167, Ann. Cas. 1915B, 728, which says:

"The evils which this section (§ 27 of the Public Service Commission Law) was intended to correct are perfectly well recognized and understood. That issues of stocks and bonds have been made fraudulently and palmed off on a credulous public to their ultimate serious loss is a matter of common knowledge. Facts in relation to such issues, especially with regard to local public utilities have been difficult, if not impossible to obtain leav-

## RE TIDEWATER TOLL PROPERTIES, INC.

ing it to the stimulated imagination of some broker or syndicate who, actuated by a heavy commission to be realized by creating a market until such stock or bonds could be unloaded, have reaped a reward in dollars and cents at the cost of those who were induced to give full faith and credit to their representations. The legislatures of many states have, therefore, thought the media of Public Service Commissions seen fit to establish a quasi guardianship over prospective investors. It is, of course, true that in such a condition many legitimate enterprises should come under the same sort of suspicion which attaches to the more hazardous schemes, devised and carried on for the improper enrichment of a few individuals. As a check upon such wild financing it is entirely proper, even upon the basis of the exercise of the police power to require all corporations conducting public utilities to lay before the local Public Service Commission, the facts relating to any such issue of stocks

and bonds or debentures or certificates of indebtedness, thus placing such facts where they will be readily obtainable by anyone who has an interest therein other than mere idle curiosity. Such statements as indicated in the acts passed should include the amount of the issue, in a general way the purposes for which it is desired to be made, and where the enterprise is one to be conducted wholly within a single state, it may well be, as the decisions seem to indicate, that the Commission may sanction or disapprove of the proposition."

Because the financial plan as proposed in the amended petition does not meet the objections stated by the Commission in its opinion filed April 8, 1930 (P.U.R.1930C, 248) as a result of the original hearing in this case, and because it regards the plan proposed in the amended petition still to be unfair to investors and the public generally, the Commission feels compelled to withhold its approval and to dismiss the application.

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## MAINE SUPREME JUDICIAL COURT

### Re Central Maine Power Company

(— Me. —, 153 Atl. 187.)

#### *Security issues — Commission's power — Capitalization of bond discount.*

1. The Commission, in the exercise of its general statutory powers to regulate public utility security issues, may properly refuse to permit a power company which has issued bonds at a discount, and has then issued temporary notes for the amount of the discount, to issue stock for the payment of such notes, p. 146.

#### *Security issues — Capitalization of bond discount.*

2. Bond discount is deferred interest payable out of earnings and is not capital, and neither the bond discount nor temporary notes given to cover

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such discount can be properly capitalized, inasmuch as the effect would be the capitalization of future earnings, p. 146.

[January 21, 1931.]

**E**XCEPTIONS filed by an electric utility to an order of the Public Utilities Commission, refusing to permit the former to issue certain securities; Commission order affirmed.

APPEARANCES: E. H. Maxcy, Nathaniel W. Wilson, and L. A. Burleigh, Jr., all of Augusta, for Central Maine Power Company; Albert J. Stearns, of Norway, Herbert W. Trafton, of Ft. Fairfield, and Albert Green, for Public Utilities Commission; Clement F. Robinson, Attorney General, for the state.

PATTANGALL, C. J.: On exceptions to order of Public Utilities Commission. The Central Maine Power Company, a subsidiary of the New England Public Service Company, is the largest public utility of its kind operating in Maine. On February 14, 1928, it filed with the Public Utilities Commission a petition asking approval for the issuance of not exceeding 7,913 shares of common capital stock of the company "for the purpose of the discharge and lawful refunding of its obligations, to wit: Its obligations incurred in providing the necessary funds for the acquisition of property used for the purpose of carrying out its corporate powers, and for the construction, completion, extension, and improvement of its facilities, and the improvement and maintenance of its service, to the amount of \$791,386.61, which is the amount of unamortized discount on the several bond issues of Central Maine Power Company."

The petitioner also alleged that:

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"Central Maine Power Company has issued, from time to time, its bonds in manner as shown in this petition. . . . The bonds so issued have been sold by the company at a price less than the par value of said bonds. All of said bonds were sold for the purpose of acquiring funds for the acquisition of property for the carrying out of the company's corporate powers, for the construction, completion, and extension of its plants and properties, and for the improvement and maintenance of its service to the public. In each case of the acquisition of property and the construction of plants and properties, the company has issued securities in principal amount sufficient only to pay for the actual cost, or a proportionate part thereof, of such properties. The sale of such bonds at a discount has made necessary the raising of funds by other means to provide the difference between the cost of the property, or a proportionate part thereof, and the proceeds realized from the sale of bonds. This difference in money required, usually denominated as bond discount, has been secured by the company by borrowing the same from various banks or others in the form of loans maturing not more than twelve months from the respective dates thereof. The company has necessarily been compelled to renew such loans from time to time. The

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notes of the company securing such loans, whether issued originally or in renewal, are the obligations of the company which it proposes to discharge and refund by the proceeds of common stock, the authorization for which is requested in this petition."

Satisfactory evidence was offered that between March 28, 1910, and December 1, 1927, petitioner, by permission of the Commission, issued bonds of the face value of \$19,066,500; that these bonds were sold at prices which yielded to the petitioner total proceeds of \$17,747,475; that the discount suffered on these sales was, therefore, \$1,319,025; that of this amount there had been amortized \$527,638.39 under orders of the Commission; and that the balance unamortized at the date when this petition was filed was \$791,386.61.

The petitioner had issued temporary notes for this amount. The suggested stock issue was for the purpose of taking up these notes.

The Commission denied the petition. Exceptions were taken to this denial.

Such authority as the Commission has concerning the issuance of securities is found in § 41, chap. 62, Rev. Stat. 1930:

"Any public utility now organized and existing or hereafter incorporated under and by virtue of the laws of the state of Maine and doing business in the state may issue stocks, bonds which may be secured by mortgages on its property, franchises, or otherwise, notes or other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property to be used for

the purpose of carrying out its corporate powers, the construction, completion, extension, or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or to reimburse its treasury for moneys used for the acquisition of property, the construction, completion, extension, or improvement of its facilities, or for the discharge or lawful refunding of its obligations, and which actually were expended from income or from other moneys in the treasury of the corporation not secured by, or obtained from the issue of stocks, bonds, notes, or other evidences of indebtedness of such corporation, or for such other purposes as may be authorized by law; provided and not otherwise, that upon written application, setting forth such information as the Commission may require, there shall have been secured from the Commission an order authorizing such issue and the amount thereof and stating that in the opinion of the Commission the sum of the capital to be secured by the issue of said stocks, bonds, notes, or other evidences of indebtedness is required in good faith for purposes enumerated in this section; but the provisions of this chapter shall not apply to any stocks or bonds or other evidences of indebtedness heretofore lawfully authorized and issued; provided, however, that the Commission may at the request of any public utility approve the issue of any stocks or bonds heretofore authorized but not issued. For the purpose of enabling the Commission to determine whether it shall issue such an order, the Commission shall make such in-

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quiries for investigation, hold such hearings and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a determination."

[1, 2] The sole issue in the case is whether or not, under the provisions of this statute and on the admitted facts, the Commission was obliged, as a matter of law, to grant the petition.

Petitioner's position is that the proceeds of the notes which it desires to replace with stock were actually invested in property necessary for the carrying out of the company's corporate purposes, and, therefore, specifically within the scope of the provisions of the statute.

The notes were, as already stated, given to fill the gap between the face value of the bonds authorized and the price which the utility received for them; in other words, to cover the bond discount. Petitioner claims that it is its right to issue securities, regardless of face value, which will when sold, whether at a discount or otherwise, produce the amount of money in good faith required to make an authorized investment, and that if, in pursuing that course, a disparity between the face of the securities issued and the amount of the investment exists at the inception of the transaction, the difference may be provided for by an amortization fund so that the final result will produce a sound foundation for all outstanding securities.

The Commission on the contrary takes the position that when, to provide for an investment of \$19,066,500, it authorized an issue of

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\$19,066,500 par value of bonds, it exhausted its authority; that the utility was not obliged to sell the bonds below par; that no necessity existed for its so doing; that it was done for the convenience of the utility and in order that it might be enabled to market its bonds at a low rate of interest; that bond discount is in reality deferred interest, must be financed out of earnings, and may not properly be capitalized. It asserts that there is no distinction between securities issued directly to cover bond discount and those issued to take up notes given to cover bond discount, and that neither comes within the scope of the purposes enumerated in the statute.

The questions thus raised are not only novel in this jurisdiction, but have never, so far as our information goes, been passed upon by any court. They have been discussed somewhat by text-writers, and have been considered by several Public Service Commissions; the provisions of our statute being generally similar to those enacted in several other states.

The decisions of the Commissions are neither uniform nor consistent. In our own state, in *Re Central Maine Power Co.* (anno.) P.U.R.1919C, 1066, the view here expressed by petitioner was sustained by the Commission; but in *Re Penobscot Power Co.* P.U.R.1922E, 861, it reconsidered the matter and adopted the policy evidenced by its decision in the instant case.

The Commissions of Indiana, Montana, Georgia, and Wisconsin have refused to permit the capitalization of bond discount, as did that of Illinois until it reversed its position in a di-

## RE CENTRAL MAINE POWER CO.

vided opinion in *Re Southern Illinois Gas Co.* P.U.R.1916C, 704: The Maryland Commission, on the contrary, like that of Maine, was at first favorable to this petitioner's theory, but in *Re Baltimore County Water & Electric Co.* P.U.R.1918F, 522, 565, came to the opposite conclusion.

In Arizona, Nebraska, and New Hampshire, utilities have been permitted to issue securities based on payments of bond discount. The California Commission in *Re Nevada, C. & O. Teleg. & Teleph. Co.* (1926) P.U.R.1927B, 662, decided that "any expense incurred in connection with the issue of bonds should be paid out of earnings."

In the absence of any authoritative precedent and because of the lack of uniformity in the decisions of the Commissions of other states, accounted for in part by slight differences in statutes but more largely because of differences in the views of the members of the Commissions as shown by frequent reversals of opinion in certain states as the personnel of the Commissions changed, we are obliged to reach our conclusion from a study of the provisions of our own statute and an analysis of the exact situation presented here.

The statute imposes upon the Commission certain duties and confers upon it certain authority with respect to the issue of securities and obligations other than those maturing within twelve months from the date of their issue, prescribing the conditions and defining the purposes for which such securities may be issued.

These purposes are (1) for the acquisition of property to be used in carrying out its corporate purposes; P.U.R.1931B.

(2) for the construction, completion, extension, or improvement of its facilities; (3) for the improvement or maintenance of its service; (4) for reimbursing the treasury for actual expenditures for these purposes; (5) for discharging or refunding these liabilities.

The utility must provide for the payment of current business expense out of earnings. Salaries, taxes, insurance, depreciation, and interest are among the items which must be thus taken care of, and short time notes given for the purpose of procuring funds to meet any bills of this sort would not be obligations which could properly be refunded by the issue of permanent securities. *People ex rel. Binghamton Light, Heat & P. Co. v. Stevens* (1911) 203 N. Y. 7, 96 N. E. 114.

If stock is to be substituted for the notes in question, it must be because the proceeds of the notes were used for one or more of the first four purposes enumerated above. Petitioner claims that such is the case. In order to determine whether or not its position is correct on this point, it may be well to reexamine and restate the exact situation and the exact facts concerning the issue of the notes.

An investment of \$19,066,500 in capital assets was proved to have been made or was in contemplation by the utility. For the purpose of reimbursing its treasury for actual expenditures in the acquisition of this property or for the purpose of furnishing funds with which to acquire it or both, permission was given to issue bonds of the face value of \$19,066,500.

Had these bonds been sold at par,

## MAINE SUPREME JUDICIAL COURT

the incident would have been closed. The utility undoubtedly could have sold them at par, but, in order to do so, would have been obliged to pay a comparatively high rate of interest. It decided, in the exercise of good business judgment, to issue bonds bearing a lower rate of interest and sell them at a discount. The proceeds of the bonds amounted to \$17,747,-475. It then issued short-term notes of \$1,319,025, the amount of the discount, and proceeded to apply sufficient of its earnings each year to the payment of these notes so that, if the payments were continued, the notes would be fully paid at the maturity of the bonds.

Negotiating these notes did not add anything to the assets of the utility. The proceeds were used to pay the difference between the face of the bonds and the price at which they were marketed, or what is usually denominated bond discount.

Our inquiry, therefore, is whether or not bond discount may properly be capitalized. There is obviously no difference between issuing stock for the purpose of paying bond discount and issuing stock for the purpose of taking up notes, the proceeds of which were used to pay bond discount.

It is perfectly legitimate for a utility to sell its bonds at less than their face value. Indeed, experience has proved that a saving in interest is effected by so doing and that such bonds are more easily marketable. But if a thousand dollar bond which could be sold at par provided it bore interest at 6 per cent sells for \$900 when paying 5 per cent, it is apparent that the obligor pays for the use of the \$900 which it receives not only

\$50 annually during the life of the bond, but \$100 additional at its maturity. Bond discount is, therefore, only another term for deferred interest.

Milton B. Ignatius, in *Financing Public Service Corporations*, discusses the point as follows:

Similarly, a corporation may discount its bonds. It can offer to accept an amount less than the par value, although it will be obligated to pay par upon maturity. The discount will represent an advance payment for the use of money, and since the bonds are currently interest-bearing, to the nominal interest rate must be added the rate prepaid by discount, and the result will be the effective interest rate.

"There may be a number of conditions warranting the issue of bonds at a discount. The prospective purchaser may consider himself entitled to a greater than the nominal rate of interest, either because of the terms and conditions of the bonds or because of the risk of the enterprise. He takes that extra interest by discounting the loan."

Whitten and Wilcox, in their work on *Valuation of Public Service Corporations*, Vol. 2, p. 1137, say:

"At first the cost of money was put forward chiefly in the form of bond discount, but analysis soon made it clear that bond discount is merely deferred interest, and, therefore, that the capitalization of bond discount as a part of construction cost would be a recognition of the incorrect practice of paying interest or operating expenses out of capital."

It could not be seriously argued that interest should be paid out of

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capital. It must be paid out of earnings, and any attempt to capitalize a deferred interest charge or a note given to cover such a charge is an attempt to capitalize future earnings.

The plain intent of § 41, Chap. 62, Rev. Stat. 1930, and a fair interpretation of its language, is that the permanent securities issued by a utility shall be balanced by its investment in capital assets.

In the instant case, the investment of \$19,066,500 stood as security for the issue of bonds of equal face value. If the theory of petitioner is correct, it could have insisted, at the time the bonds were authorized, upon a permit

to issue in addition to the bonds 13,190 shares of stock of the par value of \$100, without disclosing to the Commission any offsetting investment other than bond discount, the stock not being represented by a single dollar of capital assets.

It was to prevent inflation of that kind that the Commission was given authority to supervise within the limits of the statute the issuance of securities by public utilities. The act of the Commission in denying petitioner's request was justified. It could not have legally pursued any other course.

Exceptions overruled.

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## PENNSYLVANIA PUBLIC SERVICE COMMISSION

### City of Scranton et al.

v.

### Scranton-Spring Brook Water Service Company

[Complaint Docket Nos. 7652 et al.]

#### *Valuation — Watershed property — Coal-mining region.*

1. The special value of watershed property situated in an area where no coal exists, and belonging to a water utility operating in a coal-mining section where nearby sources of supply are polluted or subject to under-mining, is an item which must be considered in arriving at the market value of such real estate for rate-making purposes, even though it is not equal to the total value of the advantage to the company in having such watersheds, as against the use of filtration plants, p. 160.

#### *Valuation — Watershed land — Special value — Weight of testimony.*

2. Testimony of complainants against the rates of a water utility as to the market value of watershed land, in which no material weight was given to the usefulness of such land to the water company, but only to the use of such lands for residential, agricultural, or timber purposes, was considered by the Commission accordingly, p. 161.

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### *Valuation — Right of way over property owned by utility.*

3. The value of right of way over streets and lands owned by the utility itself should be omitted from the rate base, p. 161.

### *Valuation — Right of way — Acreage prices.*

4. A water utility's rights of way should not be given a width and then valued at acreage prices, where it is not possible for the utility to acquire such rights actually in this manner, p. 161.

### *Valuation — Managerial foresight — Acquisition of watershed — Water utility.*

5. No separate or additional allowance was made in the rate base of a water utility for its foresight in acquiring extensive and excellent watersheds, sufficient to supply a consolidated system consequently created, and the value of such land was estimated at actual market price, p. 162.

### *Valuation — Cast iron pipe — Fluctuating prices — Construction period.*

6. The Commission, in estimating the value of cast iron pipe of a water utility, made an effort to allow for the fluctuating condition of the market, and for the fact that the construction of such properties would necessarily consume a period of several years, p. 162.

### *Valuation — Paving over mains — Actual expense.*

7. In valuing the cost of replacing paving over distribution and transmission mains of a water utility, the commission accepted the price which the record indicated that the utility was actually compelled to pay the municipalities involved, p. 162.

### *Valuation — Working capital and supplies — Water utility.*

8. An allowance of \$500,000 was made for working capital and supplies of a water utility having a total rate base of \$43,650,000, p. 165.

### *Valuation — Going concern value — Water utility.*

9. An allowance of \$2,600,000 was made for going concern value of a water utility having a total rate base of \$43,650,000, p. 165.

### *Return — Percentage allowed — Water utility.*

10. An allowance of 7 per cent return on the present fair value of a water utility's property was held to be reasonable, p. 165.

### *Expenses — Delinquent accounts — Dissatisfaction of customers during rate case.*

11. The collection of delinquent accounts of a water utility, when there was widespread dissatisfaction among its patrons as the result of a rate increase, was held to be an expense of unusual character to be treated in the same way as the costs of the entire rate proceeding were treated, p. 165.

### *Expenses — Rate cases — Failure of effort — Water utility.*

12. No allowance was made for rate case expense incurred by a utility in connection with its efforts to put into effect increased rates, which had not been found reasonable by the Commission, p. 165.

### *Expenses — Federal income tax — Filing of consolidated tax return.*

13. In approving a water utility's proposed allowance for Federal income tax, the Commission refused to assume, as urged by protesting patrons, that the utility would be exempted from such taxation in the future by the filing of consolidated tax returns through its parent company, p. 166.

SCRANTON v. SCRANTON-SPRING BROOK WATER SERV. CO.

*Expenses — State stock tax — Estimation of property value.*

14. The contention of protestants against a water utility's rates, that no allowance should be made for state capital stock tax because the indebtedness had increased so much beyond the protestants' valuation of the property as to make such tax merely nominal, was overruled by the Commission in view of the fact that the latter refused to accept the protestants' estimate of the utility's property value, p. 166.

*Expenses — Local taxes — Water utility property.*

15. An allowance may be made for local taxes which may be properly due upon property, the value of which has been allowed in the utility's rate base, p. 166.

*Depreciation — Amount allowed — Water utility.*

16. An allowance of \$200,000 was made for annual depreciation of a water utility having a total rate base of \$43,650,000, p. 166.

*Reparation — Rebate of excessive rates — Interest.*

17. A water utility, found to have been charging excessive rates over a period of two and one-half years, was ordered to rebate all such funds in excess of the reasonable rates to consumers which had paid them, plus an interest charge of 6 per cent per annum, p. 167.

*Rates — Water — Private fire protection.*

18. A charge to an individual for private fire protection is a charge for service rendered to him alone, and should be borne by the individual so served and not by the public, p. 167.

[December 9, 1930.]

**C**OMPLAINT against increased water rates; complaint sustained and rates adjusted.

By the COMMISSION: The Scranton-Spring Brook Water Service Company, respondent in these proceedings, is engaged in supplying water to the public in the cities of Carbondale, Scranton, Pittston, Wilkes-Barre, and Nanticoke, and the surrounding territory. On May 29, 1928, it filed with this Commission its tariff P. S. C. Pa. No. 5, to become effective July 1, 1928, substantially increasing its rates for this service. The sixty-nine complaints here involved were filed against these new rates, alleging them to be unjust, unreasonable and excessive, and unjustly discriminatory in themselves. The complaints have been consolidated, P.U.R.1931B.

hearings have been held on them, an interim report and order was issued by the Commission on December 21, 1928 (P.U.R.1929B, 298) two days of argument have been had on April 14 and 15, 1930, and the matter is now before the Commission for final disposition. All the complaints will be disposed of in this single report and order. As many of them were filed prior to July 1, 1928, the effective date of the tariff, the burden of showing that the rates are reasonable is by the provisions of the Public Service Company Law placed upon the respondent company.

The record produced as the result of the fifty-nine days of hearings

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consists of almost 7,000 pages of oral testimony and over 5,000 pages of exhibits. It sets forth at length the history of the development of the present organization and property and data in great detail as to the present reproduction cost of all of it. Technical opinion as to the reproduction cost of this property is widely divergent and the claims of the respective parties are disputed in a most unusual degree, a fact which has contributed largely to the length of time necessary to take all the testimony and come to a conclusion upon it.

The Scranton-Spring Brook Water Service Company, the present respondent, was incorporated by the Act of April 5, 1867, P. L. 802, as Dunmore Gas & Water Company, for the purpose of supplying gas and water in the borough of Dunmore, Lackawanna county. By proper proceedings it accepted the Constitution of 1874 and the Act of April 29, 1874, P. L. 73. On January 25, 1928, it changed its name to Scranton-Spring Brook Water Service Company and acquired under the Act of April 17, 1876, P. L. 30, the properties and franchises of four companies, which were themselves the result of the merging of groups of formerly independent companies. These companies were Scranton Gas & Water Company, Consolidated Water Supply Company, Olyphant Water Company, and Spring Brook Water Supply Company. The acquisition of these properties was approved by the Commission on February 21, 1928 (P.U.R.1928C, 467) at its Application Docket Nos. 18030, 18031, 18032, and 18033, to which reference can be made for further details.

P.U.R.1931B.

These applications, however, also provide for the acquisition by respondent, Scranton-Spring Brook Water Service Company, of the controlling interest in the capital stock of certain non-operating public service companies of Pennsylvania, owned and operated by the four companies above-named, which in turn were controlled directly through stock ownership by the Federal Water Service Company, or indirectly through that company's subsidiary, the Pennsylvania Water Service Company.

The Scranton Gas & Water Company, the oldest of these four companies, was organized in 1854, to furnish gas and water in the older part of what is now the city of Scranton. From time to time this company built dams and reservoirs and developed new sources of supply, gradually absorbing other companies in the vicinity which did not have a sufficient supply. When in this manner it came into control of the Consolidated and Olyphant companies, it reconstructed and unified their systems, which had become insufficient and inadequate and built several large reservoirs including Brownell, Elmhurst, and Lake Scranton. By 1900 it had thoroughly developed the streams of the district, including Roaring Creek and Stafford Meadow Brook, secured an abundant supply of pure mountain water, made provision against mine subsidence, not infrequent in the district, and was in a position to supply the demands of the entire Scranton territory. It had acquired the Dunmore Gas & Water Company which is the present respondent, and also the Hyde Park Gas Company, the property of which

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has been eliminated from this proceeding.

The Olyphant Water Company was organized in 1889 to supply the borough of Olyphant. From time to time it also acquired other operating companies in the vicinity, most of which were originally organized to supply water for various collieries. It eventually found itself without an adequate supply of water and turning to the Scranton Gas & Water Company for a supply, was acquired by that company by stock purchase about 1900.

The Consolidated Water Supply Company, serving the northern end of the system was organized in 1889 to unify a number of disconnected systems which had been in operation. Of these, five were supplying water in the city of Carbondale alone, most of them having been formed primarily in the interest of the coal companies, supplying water to the public only incidentally. The formation of this company permitted the construction of adequate supply mains and for a time provided a sufficient supply of water, but the Consolidated Company in time found itself in a position where it too could not function alone, and its stock in turn was acquired by the Scranton Gas & Water Company, which connected the system with its own, making its source of supply available in this territory.

In the southern, or Wilkes-Barre section, the Wilkes-Barre Water Company and the Pittston Water Company were formed in 1850 and 1857 respectively, to supply the public in these two settlements, obtaining water supplies from the Susquehanna river. As this supply became unsuit-

able for use these companies were compelled to seek supplies from streams entering the river rather than use the river water.

All the other companies in this territory which served the general public were owned and organized for or by coal companies, primarily to secure sources of supply for the mining industry. As the territory developed the sources of supply in all cases became inadequate or contaminated and connection with other companies having a more abundant supply of suitable water became necessary. The Spring Brook Water Supply Company was formed in 1896 to develop an adequate uncontaminated supply, and that company over a period of years gradually acquired by stock ownership and lease, the properties of the other companies until it was supplying the entire section, including Wilkes-Barre and vicinity. There are forty-three companies in this group alone.

The Scranton-Spring Brook Water Service Company, as it now exists following the merger of 1928, is consequently the result of the combination of over one hundred water companies. The entire territory served is somewhat over 70 miles in length in the Lackawanna and Susquehanna river valleys, with a population of some 650,000 persons. In view of the fact that this is preëminently mining territory, the danger of interruption of service as the result of breaks in the mains, or interference with the supply of water through mine caves, is ever present, and many of the communities are so interconnected that they can be supplied from several sources. As a result of the develop-

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ment of ample supplies of water in uncontaminated mountain sections by the Scranton Gas & Water and the Spring-Brook Water Supply Companies and the complete system of interconnection with them of the other companies not so situated, this industrial territory appears to be assured of a reliable supply of pure water which does not need filtration.

The issued and outstanding capitalization of the Scranton-Spring Brook Water Service Company, following the acquisition of the stock of the four companies in 1928, consists of \$33,780,000 of  $4\frac{1}{2}$  per cent and 5 per cent bonds, including \$28,780,000 assumed in the merger and \$5,000,000 of its own serial gold notes; and \$5 no par preferred stock of the stated value of \$1,207,500, \$6 no par preferred stock of the stated value of \$5,792,500, and no par common stock of the stated value of \$5,000,000; a total of securities of \$45,780,000.

As pointed out in the Commission's interim report of December 21, 1928 (P.U.R.1929B, 298) the rates of respondent's several constituent companies had remained practically stationary over a considerable length of time, during which the rates charged by water companies and other utilities in general throughout the country had been gradually raised to meet the increased cost of construction and operation; and as also pointed out in that report the differences in the several tariffs resulted in discrimination among the several classes of consumers in the different districts.

During the 30-day statutory period following the publication of Tariff No. 5 and before its effective date, appeals were made to this Commis-

sion to suspend the proposed rates, until their reasonableness could be determined. This the Commission has no power to do under the provisions of the Public Service Company Law, which fact was recognized by counsel for the various complainants who nevertheless represented to the Commission that a serious situation existed in the several communities in regard to the new rates and that there was wide-spread opposition to them which could be allayed only by action of the Commission.

A conference was accordingly called at the direction of the Commission at which counsel for the various complainants and for the company were present. At this conference held on June 21, 1928, an agreement was reached and signed by all the parties in interest. The agreement has been carried into this record and provides as follows:

"As the result of a conference in Chairman Ainey's office between counsel for the Scranton-Spring Brook Water Service Company and the solicitors for Scranton, Wilkes-Barre, and all other communities served, it was agreed that collection of the increased rates should be postponed until their fairness and legality could be passed upon by the Commission, which determination would be made before January 1, 1929. The rates so determined by the Commission are to be effective as of July 1, 1928.

"All the solicitors for the various cities and communities present expressed their opinion that this was a fair arrangement and would be so accepted by the communities which they represented.

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"If for any reason the determination of the Commission is not had before January 1, 1929, the company reserves the right to collect the installments due on that date and thereafter at the filed tariffs.

"It was agreed that in the event of an appeal by the complainants from the decision of the Commission, it shall not have the effect of postponing the collection of the rates approved by the Commission."

The proceeding was duly set for hearing but as serious opposition to respondent's claim of value developed it became apparent that although respondent's appraisals had been prepared prior to the filing of the tariff, the complainant municipalities could not prepare their appraisals for presentation in opposition to respondent's claims within the six months' period contemplated by the agreement. Consequently the company on November 26, 1928, petitioned the Commission for an interim order establishing the rates filed.

After argument thereon, the Commission on December 21, 1928 (P.U.R.1929B, 298) issued a report and order in which it found upon the testimony thus far adduced that the rates of Tariff No. 5 were discriminatory and preferential as between classes of consumers in that too great a burden had been placed upon the domestic users of water; the rates of all the domestic consumers were accordingly ordered reduced in the sum of approximately \$245,000.

The company filed a new tariff in compliance with this order and since January 1, 1929, the rates charged have been those in conformity therewith. The company's appeal to the

superior court from this action of the Commission has been held in abeyance to permit the continuance of the taking of testimony and expedite a final decision as to the reasonableness of the rates. Notwithstanding these matters, the dissatisfaction of the community increased, particularly in the Spring Brook division in Wilkes-Barre and vicinity, until it amounted to organized opposition to the collection and payment of rates which, as indicated by the decision of our supreme court in *Suburban Water Co. v. Oakmont Borough*, 268 Pa. 243, P.U.R.1920F, 810, 110 Atl. 778, had become the only legal and collectible rates. This opposition was carried to a point where it finally resulted in an injunction being granted by the court of Luzerne county to prevent interference with the water company's operations. Meanwhile, the hearings were scheduled and held with all possible speed, and this case was given the right of way over all other matters.

The record developed shows that respondent's system of water works is divided into two great divisions, the northern or Scranton division and the southern or Spring Brook division. In the northern division there is the territory of the former Consolidated Water Supply Company consisting of the boroughs of Vandling and Forest City and also the city of Carbondale, the boroughs of Jermyn and Mayfield, and the townships of Fell and Carbondale, mostly in Lackawanna county, which are supplied from the upper Lackawanna Valley stream but tied in with the Roaring Brook system, and will be more fully connected up in the future.

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In the future the local system at Vandling and Forest City can be tied in with the Lackawanna Valley supply system of respondent for further development. There are large reservoir sites in the Upper Lackawanna Basin which will be able, when finally developed, to supply water by gravity through both the Lackawanna and Wyoming Valleys in the lower lying areas.

There are in this Consolidated territory six impounding reservoirs, two collecting reservoirs, and eleven storage and distributing reservoirs. The impounding reservoirs which are the sources of supply comprise Hart and Crystal lakes, No. 4 dam and reservoir, Low lake, Lake Chapman, and Roy brook. The collecting reservoirs, which are also sources of supply, are Reynshanhurst Upper Reservoir and Stillwater Dam and Reservoir. The storage and distributing reservoirs are Reynshanhurst lower reservoir, Fall brook dam and reservoir, Panther Bluff reservoir, Brownell dam and reservoir, Brush brook reservoir, Edgerton dam and reservoir, Susquehanna street reservoir, Brace brook dam and reservoir, tank at Forest City and Bennett's well dam. Most of these structures are sources of supply as well as of storage and distribution and from them the supply and transmission mains extend.

The Olyphant Water Company territory comprises the boroughs of Olyphant, Archbald, Blakely, Winton, Dickson City, Throop, and territories adjacent thereto, and is also connected up with the Roaring brook supply of respondent.

In this territory there are eight reservoirs. There is one impounding

reservoir, four collecting reservoirs, and three storage and distributing reservoirs. The impounding reservoir is Olyphant dam No. 3, the collecting reservoirs are White Oak dam, White Oak Log dam, Marshwood dam and reservoir, and Olyphant No. 2; and the storage and distributing reservoirs are Moosic, Mt. Reservoir, Laurel run dam, and Olyphant No. 1.

In the territory of the Scranton Gas & Water Company itself, which comprises the city of Scranton and vicinity, the supply is by gravity from four watersheds with storage reservoirs from two to thirteen miles distant from the center of the city. The territory is hilly and the distribution system is divided into five pressure-areas, each with one or more distributing reservoirs. This division is effected by closed gates, check valves, or pressure regulators through which, in emergency, the lower pressure area may receive supply from the higher. The congested business district is gated off from the rest of the service and supplied at reduced pressure through regulating valves.

The aggregate area of the four watersheds mentioned is about 77 square miles of which Roaring brook drains about 50, Little Roaring brook slightly over five, Stafford Meadow brook less than 12, and Leggett's creek 10 square miles. Roaring brook which is the principal source of supply has an average daily yield of about 43,000,000 gallons and a minimum annual average of 32,000,000 gallons. The total storage capacity of all reservoirs is about 6,000,000,000 gallons and the average daily consumption for the entire area supplied about 30,000,000 gallons.

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The Roaring brook supply is largely controlled from Elmhurst reservoir erected about nine miles east of the center of the city. This impounding reservoir receives through the natural brook channels, the supply from Lake Henry and Oak Run reservoir. Elmhurst discharges into distributing reservoir No. 7 about four miles down stream either through the natural channel of Roaring brook or through a 36-inch cast iron pipe line 36,000 feet long. This line continues 8,700 feet to Lake Scranton, on the Stafford Meadow brook watershed, which because of its small drainage area, receives its main supply from Elmhurst reservoir. The pipe line is also connected to the discharge chamber at reservoir No. 7 on Roaring brook and directly to the other discharge lines, so that reservoir No. 7 may be by-passed and the supply delivered from Elmhurst reservoir or Lake Scranton. A 16-inch line connects the main line with Dunmore No. 1 and through it the supply to that reservoir can be augmented during dry periods.

Two million gallons per day or more may be obtained from a system of wells along the bank of Roaring brook about one and one-half miles above reservoir No. 7.

A pumping station at the reservoir on the Lehigh river, about fifteen miles east of the city, is maintained to pump water from the river over the divide into the headwaters of Roaring brook.

The Stafford Meadow brook supply has three reservoirs on the watershed. They are utilized for storage and distribution. Williams bridge, about three miles east of the city, is

the highest and supplies the high service through an 18-inch line connected up with the 30-inch line to Lake Scranton. Lake Scranton receives the overflow from Williams bridge reservoir and the run-off from a small portion of the watershed; but its main supply is through the cast iron line from the Elmhurst reservoir. A 48-inch line reducing to 36-inch extends about four miles to the center of the city and supplies the main low service through pressure regulating valves. The storage of the lake is also available through the 30-inch line to either of the supply mains to the high service or to reservoir No. 7 and, through the natural brook channel, it can sustain the storage in reservoir No. 5, which supplies the South Scranton Low District.

Leggett's creek supply is taken from Griffin creek and Summit lake creek at points a short distance above where they unite to form Leggett's creek. Griffin reservoir, about six miles north of the city, discharges through the natural creek bed into the Griffin intake, from which a 24-inch pipe line extends 2,700 feet to the Providence reservoir and filter plant. Summit lake reservoir discharges through the creek channel and through Maple lake to the Larue intake reservoir from which a pipe line extends to the filter plant above mentioned, which has a rated capacity of 6,000,000 gallons per day. The filtered water goes into the Providence reservoir; but water may be by-passed and the Providence service supplied directly from Griffin or Larue intakes.

Little Roaring brook supply is used for a portion of the borough of Dunmore, but it may be utilized in Scranton.

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ton if needed. Reservoirs Nos. 3 and 4, near the headwaters of Little Roaring creek about seven miles from the city, supply through the natural stream channel, Dunmore No. 1, the storage in which can be augmented from Elmhurst or Lake Scranton through a 16-inch pipe line connecting with the supply main between those reservoirs.

Thus it is seen that the supply works comprise the Lehigh pumping station on the Lehigh river, Lake Henry, Oak run, and Elmhurst reservoirs on Roaring brook, Williams bridge reservoir, Lake Scranton and No. 5 reservoir on Stafford Meadow brook, Summit and Maple lakes on Leggett's creek and Dunmore reservoirs No. 3, 4, and No. 1 on Little Roaring brook.

The six distributing reservoirs are No. 7 on Roaring brook watershed, No. 5, Williams bridge and Lake Scranton on Stafford Meadow brook, Providence on Leggett's creek, and Dunmore No. 1 on Little Roaring brook.

In the Scranton division, which includes the Consolidated and Olyphant territories, there are 110 miles of aqueducts and supply mains, 19,699 acres of real estate, including watershed areas and 32 miles of rights of way. There are 403 miles of distribution pipes. The service connections are very largely metered.

In the Spring Brook division respondent supplies 47 different municipalities of which the city of Wilkes-Barre is the largest. The territory is about ninety square miles in extent having a population of about 375,000. It is the larger of the two divisions of respondent's properties. The sup-

plies are obtained from 39 impounding reservoirs, lakes or diverting dams on nine principal watersheds two and a half to twenty miles from Wilkes-Barre and the water is distributed from eight so-called distributing reservoirs. In emergency, water from two additional watersheds and two additional distributing reservoirs is available. There is a high and low service with an equalizing reservoir on the low service. The storage reservoirs have a drainage area of about 120 square miles and a combined capacity of 11,274,000,000 gallons. The watersheds are mainly well wooded.

The distributing reservoirs are Spring Brook intake, Laurel run No. 1, Huntsville and Huntsville intake, Camels Lodge storage, Mill creek intake, Laurel Run No. 2, Crystal intake, Pine Run, and Plymouth Reservoir. They are also classed as impounding reservoirs.

The eight distributing reservoirs have a combined capacity of 169,000,000 gallons and a contributing drainage area of 26 square miles. The two additional reservoirs available for emergency have a total capacity of 74,000,000 gallons and a tributary drainage area of 7 square miles.

From Plymouth Service reservoir a 36-inch supply main extends to Nanticoke with connections in Coal creek and Harveys creek. This line also extends into Wilkes-Barre and there connects with high and low service.

From Laurel run reservoir No. 1 there is a 16-inch supply main through the Parsons section. From Laurel run reservoir No. 2 a 24-inch main

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extends into the distribution system connecting with a 16-inch main from Mill creek. From Pine run reservoir a 16-inch main line for Ashley extends to Wilkes-Barre and vicinity.

From Spring brook intake a 30-inch main and a 24-inch main extend about seven miles to West Pittston and this line extends down the valley connecting with a 30-inch main from Huntsville and other towns on the west side of the Susquehanna river.

There are three crossings of large supply mains on the bed of the Susquehanna all protected by anchor piles or concrete cribs. Crossings of creeks are upon substantial structures. The supply mains are subject to breaks due to subsidence incident to mining operations. In the Wilkes-Barre division there are 27 miles of aqueducts and supply mains, 102 miles of transmission mains, and 573 miles of distribution pipe.

The average daily consumption of the Wilkes-Barre division is about 60,000,000 gallons, of which about 25,000,000 gallons is attributed to that city. There are about 21,000 services in the city and the total number of meters in use is 550. In general the Spring Brook Company's service is an unmetered one.

In the entire territory of the merged companies, respondent has some 48,000 acres of land most of which is watersheds which are held for the protection and preservation of the supply. Some of these are naturally forested and some have been planted by the companies.

In addition to the matters of physical and historical development and financial status already briefly outlined, the record has consisted mostly

of evidence upon the cost of the physical property involved. Respondent's witnesses have stated that in view of the early date at which some of respondent's consolidated companies were created and their facilities bought, no record exists from which a statement of the original cost of the property could be produced. Complainants have endeavored, however, to work up such a statement. Their witness, Heinbokel, made a study of all available data on the subject and produced a figure which is in part the original cost of certain of the properties, but is also in part an approximation of it, produced by comparisons of revenues derived, studies of court records, and other methods. The Commission recognizes the difficulties that have been encountered in this proceeding in obtaining any accurate information of original cost, or, even, of computing any estimates thereof that would be approximately correct. Also there is the fact that numerous changes occurred during the period when these companies were being gathered together and their properties unified. Nevertheless, the Commission has given careful consideration to such evidence of original cost as can be included as an element in determining the present fair value of the existing property.

The reproduction cost of respondent's physical property is disputed to an unusual extent. Testimony in regard to it occupies the greater portion of the lengthy record obtained. The testimony of the expert witnesses on behalf of complainants and respondent varies widely and to an extent scarcely explainable as a mere difference of opinion. Respondent company rests

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its case on this point upon appraisals by three engineering firms. The complainants rely upon the evidence of a consulting engineer (Lance) who was formerly the chief engineer of the Spring Brook Water Supply Company. Respondent's evidence as to the property of that company is based largely on an inventory of physical property as contained in a report made in 1918 by the engineering staff of this Commission under the immediate charge of the then valuation engineer (Downs), now in private practice, who, when called as a witness by respondent, was positive that the descriptions of property used in the appraisal of 1918 were derived from complainants' witness, then the chief engineer of the company. The present appraisal used by the complainants is based on entirely different facts and costs in many particulars, and while their witness denies that the items of inventory contained in the former appraisal came from him the Commission is not satisfied that that appraisal was not fair, reasonable, and accurate when made.

During the course of the hearings in the case various corrections and adjustments in the appraisals of the parties have been made so that the figures as contained in the several exhibits are subject to modification and adjustment. Respondent's figures, so adjusted, indicate a reproduction cost new of physical property, including real estate, in the amount of \$42,569,358, and depreciated \$39,976,705. The complainants' figures are \$22,124,698 and \$19,586,596.

For its real estate, including both watershed lands and urban properties, and for rights of way and water

rights, respondent company claims a value of \$5,562,246. For these same items complainants concede \$1,286,640. As has been noted, the opinions of the persons called as experts on realty values differ materially; in several instances the prices fixed comparing in the proportion of ten to one. An examination of the testimony of these witnesses indicates that those called by the complainants have considered the watershed lands as having a market value for agricultural timber or residential purposes only, while those called by respondent have given weight to a value based on the usefulness of the land for water company purposes. In a comparatively large number of instances involving large tracts and considerable total acreage, the values placed by complainants' witnesses are substantially less than the company had actually paid for these lands.

[1] The general territory involved in this proceeding is one in which coal mining is the chief industry. Land which is not underlain with coal which has been, or may be, mined, is consequently at a premium and its value is accordingly higher than otherwise. In order to procure supplies of water from springs or unpolluted streams which are not liable to destruction by undermining, it is consequently necessary for a water company to go to areas where no coal exists. Such watershed areas consequently have a special value which is reflected in their market price. This effect on market price, while not equal to the total value of the advantage to the company in having such watersheds as against the use of filtration plants for other contaminated sup-

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plies, is an item which must be considered in arriving at a market value of real estate for rate-making purposes. In *Simpson v. Shepard* (Minnesota Rate Cases) (1913) 230 U. S. 352, 57 L. ed. 1511, 33 Sup. Ct. Rep. 729, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18, the Supreme Court of the United States, speaking through its present Chief Justice, held that the railroads were entitled to the market value of their real estate "for all its available uses and purposes." If in the case of any of that property there was a special adaptation for railroad purposes that fact was an element to be considered, even though the inquiry was as to the market value of property in the hands of its individual owner rather than as to the benefit or value to the railroad by its ownership.

And in the recent appeal of the Lehigh Water Company from our findings of value on watershed lands, our own superior court in an opinion by Judge Baldrige, filed July 10, 1930, said: "The proper test in fixing present value of the lands is present market value, considering all its available uses and purposes which affect market value, and not a special value for watershed purposes." See also *Erie v. Public Service Commission*, 278 Pa. 512, P.U.R.1924D, 89, 123 Atl. 471.

[2] An examination of the general testimony of complainants' witnesses indicates that in considering the market value of watershed land they have given no material weight to its usefulness to a water company, but have regarded it as land available only for residential, agricultural, or timber purposes. Their testimony is accord-

ingly to be considered in the light of this fact. On the other hand, the Commission is not satisfied that the claims of respondent's witnesses are to be accepted without qualification. The testimony and opinions of the several witnesses on both sides have been carefully analyzed and studied, and a figure has been arrived at which the Commission believes reflects the true value of all of respondent's real estate in view of its several characteristics and attributes.

[3, 4] Complainants object to the inclusion in the rate base of certain properties which it was claimed are not used or useful in the public service, in addition to those excluded by respondent. A reasonable reserve for future needs may and should be maintained, and must be included in the rate base. *Erie v. Public Service Commission*, *supra*. The Commission while accepting many of the parcels questioned on this score, has eliminated certain parcels which it is not satisfied should be included in the used and useful property. The items so excluded are—in the consolidated company's territory: duplicated right of way, lands at Beaver Dam, Dunn lake, Ball pond, Fiddle lake, Low lake and structure, Canaan street reservoir, Bennett's well dam and structure; in the Olyphant Company's territory: land and right of way along Sterricks creek; in the Scranton Company's territory: land at Dunmore reservoir No. 6, Simonson road, Providence office building, and several miles of pipe in the distribution system; in the Spring Brook Company's territory: rights of way for supply mains, lands in Moosic borough and in Bear creek, Conyngham, Nescopeck, Fairview,

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Hunlock, Jackson, Kingston, Newport, Wright, and Eaton townships; approximately five, six, and seven miles of mountain, farm and town rights of way, respectively; all dwellings, barns, and appurtenances not occupied and used by respondent's employees; Brown's Weir House and Chronograph at Huntsville filter, Glen Lyon pumping station and equipment, storehouses and shops in Nanticoke borough and Pittston township, and inconsequential lengths of pipe in the supply, transmission, and distribution systems. Likewise, items of rights of way over streets and over land owned by the respondent, have been omitted. The Commission cannot accept the claim of complainants' witness that rights of way can be given a width and then valued at acreage prices. Such rights of way, whether held as easements or in fee simple, cannot be acquired on this basis in actual practice and, consequently, cannot so be valued for the present purposes.

Included in respondent's property herein is the property owned by the Winton Water Company and leased to respondent. It is used solely for respondent's service and will, therefore, be included in the rate base, and the amounts paid in rent to the Winton Water Company excluded from operating expenses.

[5] Respondent contends that by the foresight of the Spring Brook and the Scranton Gas & Water Companies, in acquiring the extensive unpolluted watersheds which respondent now has, in absorbing the many other companies in the vicinity which were not equipped with such supplies, and by interconnecting all the properties

so as to develop the present unified supplies, it has given to its watersheds, reservoirs, and other collecting and impounding properties a value over and above their present market value or reproduction cost, for which an added allowance should be made in the rate base. The Commission will not make any separate allowance for such added value, but has, in considering the evidence on market value of lands, endeavored to arrive at a figure which reflects the actual value of the property. The Commission's estimate of value of real estate, rights of way, and water rights of respondent is \$3,781,456.

[6] In the appraisal of physical structures also the parties are not in accord. Different prices for the cost of iron pipe have been used, and respondent has, due to the decrease in this cost during the pendency of these proceedings, revised its estimate downward to a material extent. The Commission in arriving at a unit cost for pipe, has borne in mind the present fluctuating condition of the market and the fact that the construction of these properties would necessarily consume a period of several years, and has consequently endeavored to arrive at what might be an average price over such a period. It has adopted as a price per ton for cast iron pipe delivered at Scranton and Wilkes-Barre the sum of \$38 with proper increases for smaller sizes and weights of pipe.

[7] Considerable question was raised as to the actual depth of the trenches in respondent's transmission mains, and testimony was produced by complainants to the effect that the cover over the pipe as estimated did

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not actually exist. The Commission has given careful consideration to this testimony and has reduced the depth claimed to what appears to be the actual depth as indicated by the record. Similarly, in the matter of paving over distribution and transmission mains and elsewhere, the Commission has accepted the price which the record indicates respondent is actually compelled to pay the municipalities involved. Service lines have been included only in so far as they have been constructed by respondent.

Respondent contends that a base price of 50 cents per hour for common labor should be used in all calculations involving labor costs; complainant's corresponding figure is 40 cents. Considerable testimony appears of record as to prevailing prices for labor in the Lackawanna and Wyoming valleys over a period of years as paid by municipal authorities, individuals, contractors, and others, including this respondent. Material differences of opinion also exist as to the proper unit costs for masonry and concrete in dams and reservoirs,

widths of trenches, costs per foot for excavation and filling, and laying of pipe, and also as to the actual weight of pipe used. It has been necessary in order to reach an estimate of the cost to reproduce these physical structures to examine separately the features of each one of them and to compare the various estimates of the parties for each unit of construction in each of the four territories of respondent's system, in so far as the varying methods applied permit of such comparison. The Commission has in each case studied their bases of calculation and has reached a conclusion on each item. The resulting figures have been carried into the total estimate for the property in each of the separate accounts in which it is habitually carried. Each of these calculations is largely independent and no real purpose can be served by extending the length of this report to state the finding on each separate component unit of property in addition to the general observations which have been made. The total for each account appears in the following table, made part of this report:

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## SUMMARY OF APPRAISALS OF PHYSICAL PROPERTY AS FINALLY ADJUSTED FROM THE RECORD

	Account	Respondent		Complainants		Commission	
		New	Depreciated	New	Depreciated	New	Depreciated
207.	Real estate, rights of way, and water rights .....	\$5,562,246	\$5,562,246	\$1,286,640	\$1,286,640	\$3,781,456	\$3,781,456
208.	Water supply reservation structures .....	165,275	92,994	22,720	7,280	52,303	30,597
210.	Impounding reservoirs .....	7,361,027	7,236,683	3,153,063	2,937,438	5,129,925	5,007,679
210.	Springs and wells .....	86,285	77,309	14,205	7,277	89,051	49,865
212.	Collecting reservoirs and intake wells .....	1,290,879	1,228,601	549,896	485,163	940,730	891,827
214.	Aqueducts and supply mains .....	6,431,903	5,919,055	3,936,310	3,778,234	5,637,397	5,451,656
215.	Other collecting conduits .....	798,073	764,243	509,165	470,354	689,703	680,460
219.	Filters .....	272,993	235,682	201,523	121,382	231,476	166,799
220.	Clear water basin .....	52,802	50,602	25,032	14,176	20,963	28,444
223.	Chemical treatment plant .....	27,786	26,049	26,148	21,712	27,941	23,787
224.	Laboratory property .....	6,830	6,440	6,835	3,974	6,830	6,122
233.	Other pumping station equipment .....	28,473	22,766	Excluded	Excluded	28,473	14,783
236.	Pumping station structures .....	71,388	66,551	17,497	16,185	56,680	53,225
237.	Pumps and equipment .....	40,114	31,561	20,675	10,530	35,181	25,948
238.	Boiler plant equipment .....	37,887	29,687	21,363	11,980	37,876	26,569
242.	Electric equipment .....	2,393	2,313	2,393	1,953	2,393	2,177
243.	Other pumping station equipment .....	19,302	15,030	4,056	2,436	19,246	14,148
246.	Transmission mains .....	3,418,210	3,218,210	2,246,207	2,147,268	3,189,286	3,054,091
247.	Tanks and standpipes .....	3,754,000	3,573,643	1,670,454	1,513,311	2,916,798	2,700,953
248.	Distribution mains .....	10,465,389	9,390,158	6,479,186	5,280,584	9,433,569	9,054,189
249.	Service pipes and stops .....	836,575	811,011	471,357	407,013	733,969	656,992
250.	Meters, etc. ....	701,366	637,668	687,945	485,948	696,789	627,110
251.	Hydrants and cisterns .....	269,119	263,090	209,528	155,993	235,891	198,004
256.	General office structures .....	410,457	329,291	285,719	385,217	385,217	374,320
257.	Other general structures .....	138,182	122,578	63,635	45,114	121,311	99,273
258.	General office equipment .....	60,343	55,601	60,343	29,502	60,343	48,913
259.	Other general equipment .....	250,628	123,931	109,231	59,430	246,224	115,638
City permits .....		\$42,566,812	\$39,974,159	\$22,124,698	\$19,586,596	\$34,835,808	\$33,185,025
		2,546	2,546			2,546	2,546
		\$42,569,358	\$39,976,705	\$22,124,698	\$19,586,596	\$34,838,354	\$33,187,571

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The additions and betterments to the property since the date of the inventory have been allowed in the sum of \$1,340,888 as submitted by respondent.

[8-10] The Commission's estimates of the proper allowances for construction overheads and other items not included in the physical property follows:

Omissions and contingencies .....	\$960,000
Engineering, superintendence, etc....	1,396,000
Promotion and organization .....	627,000
Administration and legal .....	485,000
Insurances and taxes .....	313,000
Interest during construction .....	1,342,000
Working capital and supplies .....	500,000
Cost of financing .....	1,900,000
Going concern value .....	2,600,000

These figures have been adopted after a thorough consideration of the conditions to be met in the construction of such a property in the territory in which respondent operates and represent sums which the Commission believes are fair and reasonable.

In the light of the preceding findings which it has made, the history of respondent's property and organization and other proper factors of value, the Commission is of the opinion and finds, that the present fair value of respondent's property for rate-making purposes is \$43,650,000, and that a return of 7 per cent should be allowed thereon.

In the matter of operating expenses, exclusive of taxes and annual depreciation, respondent claims an annual allowance of \$980,108. The complainants' corresponding sum is \$686,227. Respondent's claim is based upon the actual operating expenses as shown by the books for the year ended June 30, 1929, including items for expenses incident to the collection of delinquent accounts and the

amortization of rate case expenses, and is summarized as follows:

Operation and maintenance .....	\$826,508
Collection of delinquent accounts ..	54,000
Amortization of rate case expenses ..	99,600
Total .....	\$980,108

Complainants' estimate of \$686,227 is based upon the average operating costs actually incurred by the four predecessor companies of respondent during the 5-year period of 1923 to 1927, inclusive, with a deduction for certain nonrecurring and other charges eliminated by the consolidation, but with an estimated allowance also for certain administrative salaries in place of those paid to former officers.

[11, 12] The expenses incurred in the collection of delinquent accounts are in the main, as indicated of record, an item of unusual cost, resulting from the conditions arising out of respondent's increase in its rates. Consequently they will be treated in the same way as the costs of these rate cases.

Respondent has submitted what it terms a "rough estimate" of the expenses of the present rate case in the sum of \$487,000,—details as to the makeup of which have not been submitted. The amortization of this amount at the rate of \$99,600 a year for five years, and the allowance for the cost of collecting delinquent accounts, total \$153,600 annually. In view of the fact that respondent's evidence has not satisfied the Commission of the reasonableness of the rates put in effect by it, no allowance will be made for these items.

It is apparent that the actual operating expenses, exclusive of taxes and depreciation, for the 5-year period

## PENNSYLVANIA PUBLIC SERVICE COMMISSION

under the former management, do not furnish an accurate picture of respondent's present requirements. Likewise it must be recognized that the actual expenditures for the year ended in 1929, under the present management, but also during the pendency of this proceeding, cannot be taken as the only guide for the future. In view of all these facts, the Commission will allow the sum of \$750,000 for operating expenses, exclusive of taxes and depreciation.

[13] In the matter of Federal income tax, respondent claims an annual allowance of \$133,594. The complainants contend that the company actually paid no income tax at all for the fiscal year 1928-1929 under the new rates due to the benefit of interest deductions and to the filing of a consolidated return in common with the other operating companies of the Federal Water Service Corporation, and that in consequence no allowance for this expense should be made by the Commission. The record indicates that during the five years, 1923 to 1927, inclusive, the Federal income tax of respondent's predecessor companies gradually increased from \$125,986 in 1923 to \$166,245 in 1927. Whatever may be the fact as to respondent's ultimate liability for such tax for the year in question, although no return was actually made up to the close of the hearings in this case, the Commission cannot say that in the future respondent will be exempted, by the filing of consolidated returns through its parent company, or otherwise, from the tax which is undoubtedly the one normally applicable. The Commission is accordingly constrained to al-

low the tax in the amount shown by respondent.

[14, 15] Complainants also object to any allowance of the state capital stock tax, upon the contention that the indebtedness of the company has been increased so much beyond complainants' valuation of the property that that tax would be merely nominal. This contention fails in view of the fact that the Commission has not accepted complainants' valuation. Complainants further contend that no local taxes are due and payable on property used and useful for water company business and that, consequently, none should be allowed here. The legal distinction between local taxation on property which is necessary to the public service and that property which is used and useful, while not essential, is well recognized in the law and would seem to be beyond question here: *Spring Brook Water Co. v. Kelly* (1901) 17 Pa. Super. Ct. 347. Local taxes may properly be due upon property which is allowed as part of respondent's rate base. The Commission's allowance for taxes is accordingly \$213,833.

[16] In the matter of annual depreciation, the record indicates that respondent has from 1924 been setting aside sums in excess of \$200,000, being three fourths of 1 per cent of the depreciable property. Considering the development of the community, as well as its general type, and all the other factors which contribute to make properly maintained property become obsolete and otherwise useless, the Commission is of the opinion that the annual depreciation allowance for the purpose of this proceeding should be \$200,000.

# SCRANTON v. SCRANTON-SPRING BROOK WATER SERV. CO.

The total allowable gross revenue to which the company is entitled, may be summarized as follows:

Return of 7% on \$43,650,000 .....	\$3,055,500
Operating expense .....	750,000
Taxes .....	213,833
Annual depreciation .....	200,000

Total ..... \$4,219,333

The record discloses that the total gross revenue for the year ended June 30, 1929, was \$4,384,605. The latest annual report filed with the Commission by the company gives the revenues for the year ended December 31, 1929, as \$4,479,300. These sums are \$165,272 and \$259,967, respectively, in excess of the annual revenue allowable under the Commission's findings.

The Commission is uninformed as to gross revenue since December 31, 1929, but it is apparent that the temporary rates made effective as of July 1, 1928, are producing a substantially greater revenue than that to which the company is entitled.

[17] An order will accordingly be made for the company to put into effect as of January 1, 1931, a new schedule of rates, reducing its revenue, when applied to the experience of the last two and one-half years, to \$4,219,000. The company will be required at the same time to file with the Commission certified statements of its revenue since July 1, 1928, under the temporary rates in order that the Commission may be informed that its order has been fully complied with. The Commission is still of the opinion as expressed in its report and order of December 21, 1928 (P.U.R. 1929B, 298), that in making up the structure of the tariff here attacked and determining the relationship of

the several rates, one with the other, respondent has placed too great a burden upon the domestic consumer. The Commission will accordingly require that the reduction to be made hereunder shall all be accorded to the domestic consumers. The Commission will also require that with respect to the rates now reduced, a rebate shall be given to all such consumers for the two and one-half years during which the temporary rates have been in effect, namely, July 1, 1928, to December 31, 1930, and where the consumer has already paid the excessive rates, the rebate shall carry interest at the rate of 6 per cent per annum.

[18] Some of the complainants contend that the public and private fire protection rates are too high and that respondent's ready-to-serve charge is improper. The propriety of a ready-to-serve charge and of a charge to the public for public fire protection service has been decided too frequently by the appellate courts to require further consideration now. A charge to the individual for private fire protection is a charge for service rendered to him and should be borne not by the public but by the individual served. The Commission has examined the rate structure in the light of these several contentions and, considering all the circumstances developed by the record, is of the opinion that the public needs are best met by allowing the public and private fire protection charges to remain as they are, and thus permit the reduction in gross revenue to apply to domestic consumers' rates.

The Commission accordingly finds that the rates contained in respondent

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ent's Tariff P. S. C. Pa. No. 5, originally made effective July 1, 1928, and the supplements thereto, are excessive and unreasonable, and are unduly discriminatory as against domestic consumers.

Therefore, the several complaints relative to the rates to domestic consumers will be sustained. Respondent company will be directed to file, post, and publish effective January 1, 1931, on one day's notice to the public and this Commission, a new tariff reducing the total gross annual revenue to be derived by the company to

a sum not in excess of \$4,219,000; all the reduction to be accorded to domestic consumers. This reduction is to be in addition to the reduction of \$245,000 ordered on December 21, 1928.

The company will further be required to rebate to domestic consumers all payments or charges made at higher rates under the said temporary order of the Commission. Cash rebates shall carry interest at the rate of 6 per cent per annum.

An order will issue in accordance with these findings.

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# People ex rel. Village of Chateaugay v. Public Service Commission of New York et al.

(255 N. Y. 232, 174 N. E. 637.)

### *Judgment — Res adjudicata — Franchise litigation.*

1. The judgment of a trial court, in sustaining a suit brought by a village against the holder of an expired franchise from continued occupation of the village streets, in which suit the defendant put into evidence the fact that it also held another older unused and distinct franchise, was held not to be an adjudication of the validity of the unused franchise to the extent of precluding a subsequent consideration by the Public Service Commission of the merits of that question, p. 169.

### *Franchises — Declaration of revocation — By action in proceedings — Non-user.*

2. The action of a village board, in passing a resolution directing its counsel to oppose the granting of an application, before the Public Service Commission, of an electric company holding a 30-year old franchise which had never previously been exercised, for a certificate to operate under such franchise, and the subsequent answer of the village filed with the Commission repudiating the ancient franchise, was held to be a sufficient

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declaration of the intention of the village to revoke the grant for nonuser so as to preclude the Commission from subsequently granting the certificate, p. 172.

*Franchises — Revocation for nonuser.*

3. The failure of the holder of a franchise to render service as an electric utility within a village for nearly thirty years is ample grounds for revocation of the franchise for nonuser, p. 172.

*Certificates — Consent of local authorities.*

4. The existence of a valid and unrevoked consent of the proper local authorities is a necessary condition precedent to the jurisdiction of the Public Service Commission to grant an application for a certificate to render electric utility service within a municipal corporation, p. 172.

[January 6, 1931.]

**A**PPEAL by an electric utility from an order of a lower court annulling a certificate of convenience and necessity granted to it by the Public Service Commission; affirmed. For lower court decision, see 229 App. Div. 526, P.U.R.1930E, 193, 242 N. Y. Supp. 398.

APPEARANCES: E. B. Naylor, of New York City, and Frank Irvine, of Ithaca, for appellant; Patrick J. Tierney, of Plattsburg, and Thomas J. Fitzpatrick, of Chateaugay, for respondent.

CARDOZO, Chief Justice: On the petition of the Eastern New York Electric and Gas Company, the Public Service Commission on March 14, 1929, made an order approving the construction by the petitioner of an electric plant for furnishing to the public electricity for light, heat, and power in the village of Chateaugay, Franklin county, and permitting and approving the exercise of the rights and privileges conferred by a franchise which had been granted by the board of trustees of the village to J. O. Smith, the petitioner's assignor, on March 28, 1899.

The village of Chateaugay, which had opposed the granting of the certificate, sued out an order of certi-

orari to review the order of the Commission as well as a later order denying a rehearing.

The New York State Electric and Gas Corporation, the successor to the Eastern New York Electric and Gas Company, intervened by leave of court as a party to the proceeding.

The appellate division upon the return to the order of certiorari annulled the determination of the Commission upon two grounds: First, that by a judgment in a former action between the village and the lighting company it had been adjudged that the so-called Smith franchise was nonexistent and void; and second, that irrespective of the effect of the former adjudication, the franchise was without validity for non-acceptance and nonuser.

Upon this appeal by the lighting company the two objections to the franchise will be considered in succession.

[1] We are unable to yield assent

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to the conclusion of the court below that the invalidity of the Smith franchise is *res judicata*.

In 1902 the village of Chateaugay granted to a corporation, the Chasm Power Company, a franchise to occupy the streets and supply electric light and power for a period of twenty years. Upon the expiration of the twenty years (in 1922), the limitation of time was apparently overlooked, and the power company continued to serve the village and the public as it had done those many years before. The limitation was remembered in 1925, and thereupon the village, instead of renewing or continuing the franchise in favor of the company in possession, declared it at an end and attempted to confer it on another. A lawsuit promptly followed. The village brought suit against the Chasm Power Company in August, 1926, to enjoin the continued occupation of the streets and public places by the poles and other fixtures. The power company answered pleading acquiescence and estoppel. During the pendency of the action the rights, if any, of the power company were assigned to the Eastern New York Gas and Electric Company, which was joined as a defendant. The suit resulted in a judgment in favor of the village enjoining the continued occupation of the streets and public places, which judgment was affirmed by the appellate division [(1929) 227 App. Div. 642, 235 N. Y. Supp. 903] and later by this court [(1930) 253 N. Y. 592, 171 N. E. 796].

Before the grant of any franchise to the Chasm Power Company, one J. O. Smith had applied to the board

of trustees of the village for a franchise permitting him or his assigns to place poles and other lighting appliances in the streets of the village for the purpose of supplying electric light under the name of the High Falls Electric Light and Power Company. On March 27, 1899, the board of trustees adopted a resolution granting the petition. Incorporated in the resolution was a written promise signed by Smith, dated the same day, whereby he undertook in consideration of the granting of the franchise to supply light to the village for its streets and public buildings at designated rates. The board of trustees, in the resolution granting the petition, accepted this offer, and by implication, if not expressly, promised on its part to make payment for the service.

Nothing was done by Smith under the contract so made or the franchise so conferred. No plant was ever acquired by him, and no poles or wires were ever built or strung. After his death, however, his executors assigned his rights and interests in and under the franchise to the Eastern New York Electric and Gas Company. This assignment was made in November, 1927, while the suit by the village against the power company was still undetermined.

No issue in respect of the Smith franchise or of the rights of an assignee thereunder was tendered by the pleadings, in the suit by the village. Indeed, when the suit was begun, the Chasm Power Company, which had never acquired Smith's interest in the franchise, was still the sole defendant. The wrong charged in the complaint was the continued

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occupation of the streets after the time limit had expired. The justification pleaded in the answer was acquiescence and estoppel. Upon those issues the parties went to trial, the power company's assignee being then joined as a defendant. In the course of the trial, without suggestion of a purpose to broaden the issues as defined by the pleadings, the defendants put in evidence the Smith franchise and the assignment. At that time (November, 1928) the Public Service Commission had not yet issued a certificate of permission and approval. Plainly, therefore, the Smith franchise, apart from any objection of nonacceptance or nonuser, could not avail to confer upon the defendants a present right of occupation (Public Service Commission Law; Cons. Laws, Chap. 48, § 68). The defendants in offering it in evidence, did not state the purpose of the offer, but they must have understood that in the absence of a certificate the privilege that it conferred was at best imperfect and potential. When the case was in this court [(1930) 253 N. Y. 592, 171 N. E. 796], they disavowed any notion either then or at any time that a privilege so inchoate was evidence of a subsisting right. The object of the offer was stated to be this, that the remedy of an injunction being discretionary, the acquisition of the Smith franchise, though not justifying occupation in default of approval by the Commission, might be deemed to be a circumstance affecting in some measure the exercise of discretion.

When the case was submitted to the trial judge, the defendants proposed 74 findings of fact and 9 con-

clusions of law. Two of the proposed findings of fact set forth the resolution of the village granting the franchise to Smith and the assignment by Smith's executors. None of the conclusions of law proposed any ruling in respect of its validity. Whatever validity it had was treated, apparently, as inchoate and uncertain, for the action of the Commission was still unknown and problematical. At most there was a suggestion of a circumstance that might supply a reason for delay.

On the side of the plaintiff village, there was equally no thought that the validity of the assignment to Smith and his assigns was an issue to be determined. The decision of the trial judge, which embodies presumably the findings proposed by the successful party, does not mention the Smith franchise at all. No finding was proposed that there had been a failure to accept it or a failure to use it. No conclusion was proposed that its vitality had been sapped by inaction or abandonment. There is indeed a conclusion of law that the defendants "have no consent, grant, or franchise from the plaintiff, the village of Chateaugay, to occupy the streets and public places of the village." This conclusion, classified as one of law, is not a determination of new issues, unrelated to the pleadings. It is precisely what it professes to be, a deduction of law from the facts already found. The meaning is no more than this, that the franchise to the power company, the only franchise mentioned in the decision, has been terminated through lapse of time, and that the acts relied upon by the defendants in support of their defenses

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of acquiescence and estoppel are unavailing to preserve it.

The burden is on a litigant who claims the benefit of a former judgment as *res judicata* to prove that the *res* to be thus established by estoppel was either involved by implication or actually determined in the former litigation (Rudd v. Cornell (1902) 171 N. Y. 114, 127, 63 N. E. 823; Silberstein v. Silberstein (1916) 218 N. Y. 525, 528, 113 N. E. 495; Mehlhop v. Central Union Trust Co. (1923) 235 N. Y. 102, 138 N. E. 751; Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp. (1929) 250 N. Y. 304, 165 N. E. 456). Presumably the issues involved or determined are those pertinent to the subject of the controversy as defined by the pleadings (Silberstein v. Silberstein, *supra*; Pray v. Hegeman (1885) 98 N. Y. 351, 358). If adhering to that presumption we look to the pleadings in the former litigation, we find that a franchise distinct altogether from the one to Smith and his assigns was the subject of the controversy. The test of the pleadings and their implications, however, is not final and exclusive. The course of the trial or the form of the decision may show that the pleadings were abandoned, and that controversies beyond them were determined after trial (Silberstein v. Silberstein, *supra*). This extension of the pleadings is not to be presumed. The burden of proving it is on the party asserting the estoppel. We think the burden is not sustained upon the record now before us. The record does not show in any clear or satisfactory way that the defendants in the former action understood that they were litigating the question

whether the franchise to Smith and his assigns, which by concession was still inchoate for want of the approval of the Commission, had been abandoned or forfeited through nonacceptance or nonuser, with the result that approval, if obtained, would be vain and ineffective. The record does not show that the trial judge, disregarding the pleadings, determined that question, or considered it at all. Certain it is also that no such question was considered when the case was in this court [(1930) 253 N. Y. 592, 171 N. E. 796]. We think it is still open, unaffected by the former judgment.

[2-4] The former judgment not availing as a bar or an estoppel, we have yet to determine whether the approval of the Commission is invalid because of failure of proof of a franchise presently existing.

Public Service Commission Law, § 68, provides: "No gas corporation or electrical corporation shall begin construction of a gas plant or electric plant without first having obtained the permission and approval of the Commission. No such corporation shall exercise any right or privilege under any franchise hereafter granted or under any franchise heretofore granted, but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the Commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the Commission, together with a verified statement of the president and secretary of the corporation, showing

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that it has received the required consent of the proper municipal authorities."

Under this statute a consent presently operative that the petitioner occupy the highway is a condition precedent to a certificate of approval. The existence of such a consent is a fact to be proved to the Commission just as much as any other fact conditioning its action. (*Long Beach v. Public Service Commission* (1928) 249 N. Y. 480, P.U.R.1929B, 287, 164 N. E. 553.) The petitioner could not rid itself of the burden thus imposed by proving a consent lawful when given, but later lawfully revoked. The revocation, if lawful, puts the consent out of existence as effectively as if a franchise for a definite term had expired by limitation. A prop essential to approval is withdrawn, and the petition collapses with it.

We think a lawful revocation, terminating the franchise, has been established by the village. The rule is now settled that the municipal authorities consenting to a franchise for the occupation of the public streets, may revoke the consent for nonuser of the privilege (*New York Electric Lines Co. v. Empire City Subway Co.* (1914) 235 U. S. 179, 194, 59 L. ed. 184, 35 Sup. Ct. Rep. 72, L.R.A. 1918E, 874, Ann. Cas. 1915A, 906; *New York Electric Lines Co. v. Gaynor* (1916) 218 N. Y. 417, 113 N. E. 519; *Stillwater v. Hudson Valley R. Co.* (1931) 255 N. Y. 144, 174 N. E. 306). The revocation, if based upon sufficient grounds, is effective, without previous adjudication, from the time it is declared, just as it would be effective in like circumstances to

terminate a private grant. In the one case as in the other the declaration is not conclusive. The adequacy of the cause, if contested by the holder of the grant, must be considered and determined. Even so, the determination, when made, is not the operative act that extinguishes the grant; it is merely the approval and registration of an election previously declared. "The resolution in such case serves to define the attitude of the public authorities, and to revoke the permission where sufficient ground exists for such revocation." (*New York Electric Lines Co. v. Empire City Subway Co. supra*, at p. 195 of 235 U. S.).

Sufficient grounds there plainly were for the recall of this consent. For nearly thirty years nothing had been done by Smith or his assigns either in the fulfillment of the lighting contract with the village or in the use of the franchise that had been given in aid of its performance. Then, with Smith in his grave, a lighting corporation unearths the stale grant, so long neglected and forgotten, and makes proof of an assignment obtained from the executors, to continue an occupation that had been declared to be illegal. The evidence of abandonment could hardly have been clearer if the petitioner had come forward after inaction for a century.

The argument is made that revocation, even if permissible, had not been adequately declared when the Commission certified approval, and that in the absence of revocation the franchise still subsisted. The facts, we think, are to the contrary. A resolution terminating a franchise for

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breach of a condition, is not required to follow a particular form. There is no need to use the word "revoke" or any other term of art. All that is needed is that the election be so expressed as to make intention reasonably apparent when words are interpreted in the setting of the circumstances. The test was fully met. As soon as the application for a certificate was made to the Commission, the board of trustees adopted a resolution directing counsel for the village to oppose the granting of the petition. Following this resolution the village served an answer, verified by the mayor, in which it denied that the petitioner or its predecessors in title had any privilege or franchise to occupy the village streets under the resolution of the Board passed in March, 1899, or by any other consent or grant. This could only mean, in the setting of the circumstances, that the franchise of March, 1899, was no longer in existence. Upon the hearing before the Commission, counsel for the village stated as one of the grounds of opposition that there had been a forfeiture of the consent by reason of nonuser. No objection was made, so far as the record now informs us, that the form of the resolution was insufficient to establish revocation. The petition for rehearing gave notice to the Commission that within a fortnight following its certificate another resolution, revoking the consent with all possible formality, had been spread upon the records. Even if we disregard the later resolu-

tion on the ground that a petition for a rehearing invokes the exercise of discretion (*People ex rel. New York & Q. Gas Co. v. Straus*, 182 App. Div. 666, P.U.R.1918D, 603, 169 N. Y. Supp. 953; *Public Service Commission Law*, § 72), we think what had been done already was a disclosure of an election too plain to be misread.

In what has been written we have assumed in favor of the appellant that the nonuser of the franchise is the breach of a condition subsequent, with the result that the privilege survives until revoked. Such is commonly the effect (*New York Electric Lines Co. v. Empire City Subway Co. supra*). The nature of the condition, whether precedent or subsequent, is, however, a question of intention, dependent for its solution upon the terms of the enabling statute and the language of the grant (*Vroom v. Tilly* (1906) 184 N. Y. 168, 77 N. E. 24). We are not required to determine whether this particular franchise is so connected with a contract for the lighting of the streets and public buildings (*Village Law*; *Cons. Laws*, Chap. 64, § 240) that failure to act thereunder within a reasonable time is a breach of a condition precedent or at least of one concurrent. We leave that question open.

The order should be affirmed with costs.

Order affirmed.

Pound, Crane, Lehman, Kellogg, O'Brien and Hubbs, JJ., concur.

RE TAYLOR TRUCK-A-WAY, LIMITED  
CALIFORNIA RAILROAD COMMISSION

## Re Taylor Truck-A-Way, Limited

[Decision No. 23144, Application No. 16991.]

*Security issues — Commission jurisdiction — Reduction in stock.*

Reduction of outstanding stock because of losses sustained through disposition of obsolete equipment is a matter over which the Commission has no jurisdiction.

[December 8, 1930.]

**A**PPPLICATION of a motor carrier for authority to issue securities; granted.

**APPEARANCE:** Rex W. Boston, for applicant.

By the **COMMISSION:** In this proceeding Taylor Truck-A-Way, Limited, asks permission to issue \$9,100 par value of its common capital stock for the purpose of paying indebtedness payable to Fred R. Taylor and Gaynell Reid Taylor.

Applicant is engaged in the transportation of automobiles by means of special automotive equipment as a common carrier between Long Beach and Los Angeles on the one hand and various points throughout southern California on the other hand, under a certificate of public convenience and necessity granted by the Railroad Commission by Decision No. 22927, dated October 2, 1930, in Application No. 16709.

Applicant has an authorized stock issue of \$150,000 divided into 1,500 shares of the par value of \$100 each. It appears of record that prior to Decision No. 22927 applicant issued 549 shares of its capital stock (\$54,900

par value) under permission obtained from the commissioner of corporations. It seems that at the time this permission was secured, and at the time the \$54,900 of stock was issued, applicant was not engaged in a transportation business under the jurisdiction of the Railroad Commission.

It appears further from the record that prior to the aforesaid Decision No. 22927, Fred R. Taylor and Gaynell Reid Taylor advanced to applicant \$9,100 to enable it to acquire additional equipment. It is for the purpose of paying these advances that applicant asks authority to issue the \$9,100 of stock.

Nearly all of the applicant's equipment is new. The cost of its equipment less accrued depreciation is reported at \$61,644.97. In addition, it reports current assets of \$14,515.74, deferred assets of \$5,287.79 and intangible property of \$1,866.70, making a total of \$83,315.20. Its liabilities, including the \$9,100 heretofore mentioned, are reported at

## CALIFORNIA RAILROAD COMMISSION

\$55,988.64. During the current year it has been necessary for applicant to dispose of all of the equipment against which its stock was originally issued and acquire new equipment. This transaction, together with the losses incurred in operation, resulted in a deficit of \$27,573.44 as of October 31, 1930. Of this deficit \$23,347.66 represents losses resulting from the sale of old equipment. Deducting the accumulated deficit from the outstanding stock of \$54,900 leaves a net worth in applicant's stock of \$27,327.56, which, added to its current liabilities, makes a total of \$83,315.20. It was stated by applicant's representatives that they were considering taking the necessary steps to reduce its outstanding stock because of the losses which it sustained through the disposition of its obsolete equipment. This is a matter over which the Commission has no jurisdiction. In this connection it might be stated that all of applicant's outstanding stock except one share is owned by Fred R. Taylor and Gaynell Reid Taylor.

[Order omitted.]

### Note.—Security Issues.

A note, if not secured by a lien on public utility property, may be issued without authorization of the Commission according to a ruling of the California Railroad Commission. Re Central Mendocino County Power Co. Decision No. 23149, Application No. 17033, Dec. 10, 1930.

The Indiana Commission, in authorizing the issuance of securities for the

acquisition of property where the Interstate Telephone & Telegraph Company, a holding company, held all of the stock in each of the five corporations appearing as the sellers, decided that it should not authorize a discount because the bonds and preferred stock could not be sold to the public for the benefit of a corporation over which the Commission exercised jurisdiction. Re Miami-Wabash County Teleph. Co. No. 10078, Sept. 26, 1930.

The Nebraska Commission, in granting the application of an irrigation company for authority to issue and sell certain stock and bonds, found that the company had previously sold a few shares of a former issue to persons not owning land to be benefited by the application of water. Although this was done for the purpose of promoting the enterprise, and it was understood that the stock so purchased would be retired when the funds were available, the Commission believed that the stock sold to parties not landowners was a violation of the company's articles of incorporation, and provided that the stock sold to such parties should be acquired by the company and paid for with proceeds of the issue under application. Re Elmcreek Ditch Co. Application No. 8668, Jan. 13, 1931.

In authorizing a newly organized corporation to take over the operation of a telephone system, formerly operated by a corporation which had become defunct through the expiration of its charter, it was held that authority should also be given to the new company to issue securities to cover the reasonable expense of reorganization after such expenditure has been made and paid for. Re Dryden Teleph. Corp. (N. Y.) Case No. 6070, Jan. 13, 1931.

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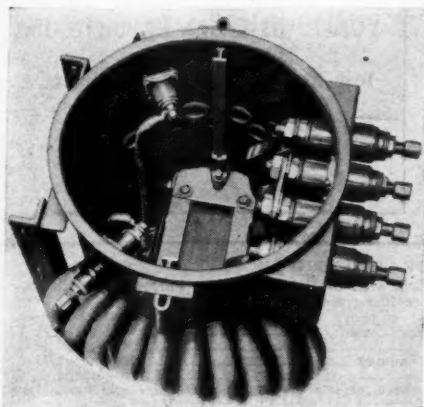
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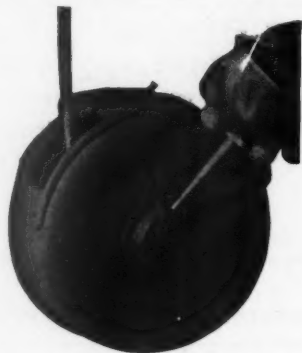
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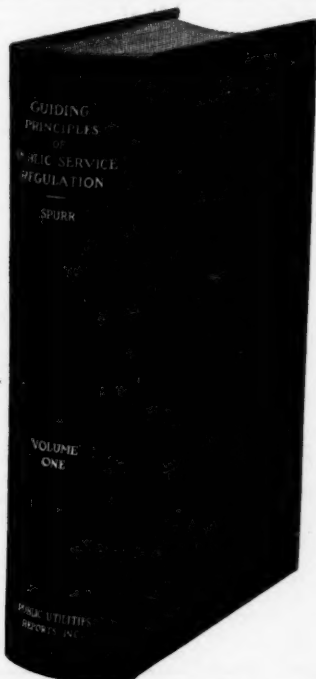
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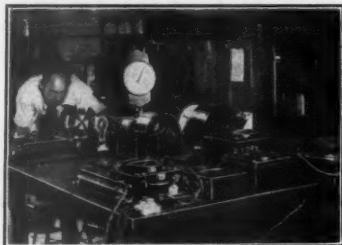
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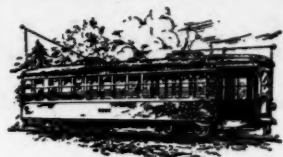
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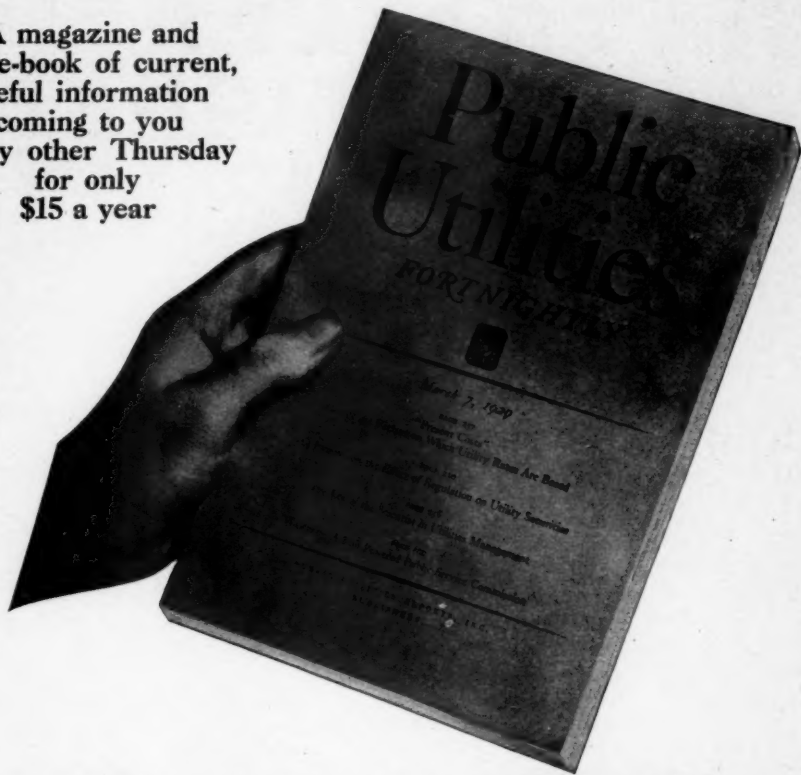
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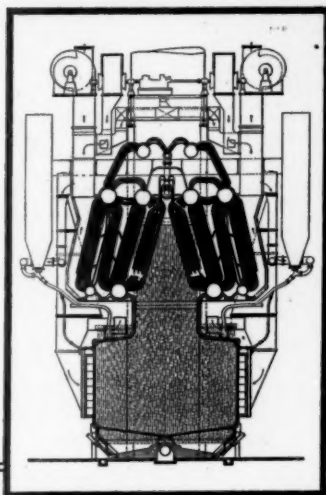
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